

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA (Asheville)

No. 1:20-cv-00066-WGY

CARYN DEVINS STRICKLAND, formerly known as Jane Roe,  
Plaintiff

vs.

UNITED STATES OF AMERICA, et al,  
Defendants

\*\*\*\*\*

For Bench Trial via Courtroom Zoom Before:  
Judge William G. Young

United States District Court  
District of Massachusetts (Boston)  
One Courthouse Way  
Boston, Massachusetts 02210  
Wednesday, December 13, 2023

\*\*\*\*\*

REPORTER: RICHARD H. ROMANOW, RPR  
Official Court Reporter  
United States District Court  
One Courthouse Way, Room 5510, Boston, MA 02210  
rhrbulldog@aol.com

## A P P E A R A N C E S

CARYN STRICKLAND, ESQ.  
COOPER J. STRICKLAND, ESQ.  
P.O. Box 92  
Lynn, NC 28750  
(802) 318-0926  
Email: Caryn.devins@hotmail.com  
Pro Se Plaintiff

JOSHUA MICHAEL KOLSKY, ESQ.  
DANIELLE YOUNG, ESQ.  
MADELINE McMAHON, ESQ.  
U.S. Department of Justice  
1100 L Street NW  
Washington, DC 20005  
(202) 305-7664  
Email: Joshua.kolsky@usdoj.gov  
For Defendants

## I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
---------	--------	-------	----------	---------

CARYN DEVINS STRICKLAND (Continued.)

By Mr. Kolsky:

By Mr. Strickland:

JAMES ISHIDA

By Mr. Kolsky:	20	104
----------------	----	-----

By Ms. Strickland:	52	108
--------------------	----	-----

ANTHONY MARTINEZ

By Ms. Young: 112

By Ms. Strickland:

## E X H I B I T S

EXHIBIT 18	.....	26
EXHIBIT 158	.....	23
EXHIBIT 159	.....	28
EXHIBIT 160	.....	33
EXHIBIT 161	.....	42
EXHIBIT 162	.....	44
EXHIBIT 163	.....	80
EXHIBIT 164	.....	118
EXHIBIT 165	.....	128
EXHIBIT 166	.....	139
EXHIBIT 167	.....	140
EXHIBIT 168	.....	143

1 P R O C E E D I N G S

2 (Begins, 9:00 a.m.)

3 THE COURT: Good morning. Ms. Gaudet informs me,  
4 Mr. Strickland, that you have no further questions for  
5 the witness, is that correct?

6 MR. STRICKLAND: Yes, your Honor.

7 THE COURT: I have some questions, so perhaps she  
8 might resume the witness stand for just a few minutes.

9 (Pause.)

10 THE COURT: And, ma'am --

11 Ms. Gaudet, would you remind the witness she's  
12 still under oath.

13 THE CLERK: I'd like to remind you that you are  
14 still under oath, do you understand?

15 THE WITNESS: Yes, thank you.

16 THE COURT: Ms. Strickland, I just have a few  
17 questions more to get the timeline of things in my mind,  
18 and my questions may go to things that are already in  
19 the record. But it will help me just to get to know the  
20 situation better.

21 Turn back, if you would, to your education in law  
22 school. Did you do any clinical, um, courses, courses  
23 that took you out of the law school and into the  
24 courtroom?

25 THE WITNESS: Yes, your Honor. It's a time ago,

1       so I'll do my best to try to remember.

2               I remember doing a clinic for North Carolina Legal  
3       Aid, that was a semester-long clinic. I also remember  
4       doing internships in law school for --

5               THE COURT: Let me interrupt -- actually let's go  
6       to those internships. Yes, you interned for who?

7               THE WITNESS: Yes, your Honor. I interned for the  
8       Federal Public Defender's Office in Burlington, Vermont,  
9       which is actually when I really decided that it was my  
10      dream job, that I really wanted to do public defense  
11      work and in particular a Federal Public Defender office.

12              I also interned for a federal judge, William  
13      Sessions, who served on the Sentencing Commission. So  
14      that was also part of my interest in how that developed  
15      in federal sentencing law in particular.

16              I -- um, without looking at my resume, it's hard  
17      for me to remember. Those are the ones that come to  
18      mind.

19              THE COURT: All right. And when you got out of  
20      law school, did you sit for the bar right away?

21              THE WITNESS: Yes, your Honor, I sat for the bar,  
22      I believe it would have been -- I think people usually  
23      take the bar in August, the summer after law school. So  
24      the first opportunity I took, I passed the Vermont bar.  
25      Um, that was the before the uniform bar exam, so, um, it

1 was for the --

2 THE COURT: All right. And what was your first  
3 job after law school?

4 THE WITNESS: I clerked for the Chief Justice of  
5 the Vermont State Supreme Court, Paul Rieber.

6 THE COURT: Thank you. And was that a year-long  
7 clerkship?

8 THE WITNESS: Yes, your Honor.

9 THE COURT: And again, because I want to talk  
10 about your clerkship on the Fourth Circuit -- and in  
11 these questions naturally I'm not asking for anything of  
12 substance, I recognize the confidentiality of a  
13 clerkship, but just tell me the type of work you did as  
14 law clerk for the Chief Justice, that was an appellate  
15 position?

16 THE WITNESS: Yes, your Honor, it was an appellate  
17 position and I mean I would say I did basically  
18 everything that judicial law clerks do, I drafted  
19 opinions, I drafted bench memos before the oral  
20 argument, I helped the justice prepare for oral  
21 argument.

22 We also -- you know obviously on an appellate  
23 court you have to work with other justices on the court.  
24 There are five justices on the Vermont Supreme Court.  
25 So I had to have a working relationship with all of

1     those justices. So it was a very, um -- like any  
2     appellate chambers, it was a very close-knit  
3     environment.

4             So there were a lot of situations where, um, for  
5     example, you might have to negotiate a position or  
6     something like that, try to make sure that other people  
7     are on board with an opinion. So I helped research and  
8     come up with ideas to try to help the Chief Justice just  
9     ensure that what he wanted to do in the case was  
10    accomplished.

11            THE COURT: And after that year, what did you do?  
12    What was your next job?

13            THE WITNESS: Oh, yes, your Honor. So my next job  
14    was that I clerked for a federal district court judge,  
15    James Jones, um, he also served on the FISA court at  
16    that time. But I didn't specifically help with that.  
17    But he served in Abington, Virginia. And, um --

18            THE COURT: Forgive me, but is that the Eastern  
19    District of Virginia?

20            THE WITNESS: The Western District of Virginia.

21            THE COURT: The Western District of Virginia. All  
22    right.

23            THE WITNESS: Yes.

24            THE COURT: And, um, what did you do in working  
25    for him?



1           THE WITNESS: Yes, your Honor. So many of the  
2 same tasks I just described, except because it's a trial  
3 court, obviously the focus is more on trial work. So,  
4 um, I helped research and prepare opinions and bench  
5 memos, just like an appellate judge, but I also helped  
6 with jury trial situations, I drafted jury instructions  
7 for the judge, helped the judge prepare for various  
8 issues that came up at the trial.

9           The other major, um, thing that was going on the  
10 year that I clerked there was that there was a  
11 retroactive sentencing guidelines amendment by the US  
12 Sentencing Commission called Amendment 782, and that  
13 resulted in a retroactive change to sentencing law that  
14 affected many many criminal defendants. And in  
15 particular in that district there was a -- I think it  
16 was one of the top 5 or 10 districts in the country, so  
17 I helped spearhead that project of making sure that  
18 those sentencing guideline changes were implemented  
19 properly.

20          THE COURT: And after that job -- that lasted a  
21 year, I'm assuming. After that what did you do?

22          THE WITNESS: Yes, your Honor. So the year after  
23 that I went back to Vermont and I clerked for Judge  
24 Peter Hall, um -- and may he rest in peace, he's not  
25 with us anymore, but he was a judge on the Second

1 Circuit Court of Appeals. So I clerked for him for a  
2 year. And, um, again it was -- I mean obviously in some  
3 ways different from the Vermont Supreme Court, but in  
4 many ways similar.

5 We observed a lot of oral arguments. There were  
6 -- really I think what was special about that clerkship  
7 is obviously, um, the Second Circuit is a special court  
8 and there were a lot of really high-profile matters  
9 going on at the time, as there always are, and so I got  
10 to participate in all of the law clerk duties for those  
11 matters, researching, drafting opinions, bench memos,  
12 and assisting the judge in preparing for oral argument,  
13 working with other chambers.

14 THE COURT: And again I'm assuming that that  
15 clerkship lasted for a year. After that what did you  
16 do?

17 THE WITNESS: Um, so then, during my year at the  
18 Second Circuit, I interviewed for a Supreme Court  
19 fellowship and I was selected to serve as a Supreme  
20 Court fellow in the Administrative Office of the US  
21 courts. So that's -- which was obviously a tremendous  
22 honor. So that's what I did next.

23 THE COURT: Now I'm somewhat familiar with the  
24 Supreme Court fellows program and, um, fellows do a  
25 variety of things. I'm assuming again that that was a

1 year, um, fellowship. And what did you do? Again I  
2 don't mean to get into substance, but just what did you  
3 do, what was the area of your research or work? Give me  
4 some idea.

5 THE WITNESS: Yes, your Honor, I'm happy to answer  
6 that.

7 So there were basically two parts of the  
8 fellowship. One part of the fellowship was that I  
9 worked with other officials in the Administrative Office  
10 of the US courts in their support of the Judicial  
11 Conference meetings twice a year, and there are also  
12 various subcommittees of the Judicial Conference. And  
13 so I worked in the Department of Program Services.  
14 Laura Miner was my immediate supervisor. She was the  
15 Associate Director of AO at the time. And so I worked  
16 with her on streamlining the agenda items for the  
17 Judicial Conference subcommittees that we were assigned  
18 to in our office. So that's kind of -- I mean I did a  
19 lot of other things too, but that's kind of a big  
20 summary of that side of it.

21 And then another component of the fellowship was  
22 that we did a research project, and so I think I had  
23 just mentioned that -- I mean I've had an interest in  
24 federal sentencing law since law school from my  
25 internships and those experiences. And so when I

1 clerked for Judge Jones and we had the Amendment 782  
2 project, that was when I realized that I was really  
3 interested in how changes to sentencing law were  
4 implemented administratively and how that would play out  
5 and how it would affect the rights of individual people  
6 who were affected, and how there could have been  
7 disparities in the way that the guideline changes were  
8 implemented in different courts, even though, you know,  
9 you would think in the abstract there's an amendment and  
10 it should be applied. But in reality there were a lot  
11 of differences between how courts would handle those  
12 issues administratively.

13 So I was interested in exploring -- doing a  
14 research project to explore how different courts  
15 implemented retroactive changes to sentencing law. And  
16 part of the reason for that was that the Supreme Court  
17 had just decided two cases, **Johnson v. United States** and  
18 **Welch v. United States**, which resulted in an  
19 invalidation of the residual clause of the Armed Career  
20 Criminal Act, and so that resulted in just a wave of  
21 retroactive changes in sentencing law. So what I did  
22 for my research project was I compared how Amendment 782  
23 was implemented through the guideline amendment process  
24 versus a Supreme Court decision of constitutional law  
25 that was made retroactive by the Supreme Court and how

1       those were implemented.

2               And so I, um, went to different courts, um,  
3       throughout the country and I did interviews of judges  
4       and court staff and the clerks's offices, I interviewed  
5       people in the US Attorney's Office and the Federal  
6       Public Defender's Office, and as well as the probation  
7       services, because the probation services are such a  
8       critical element of how making those changes work, when  
9       people come out on supervised release. And so I --

10              THE COURT: All right, I'm interrupting only  
11       because you've completely answered my question and I  
12       thank you.

13              So we're four years into your legal career now, I  
14       think. And so after the fellowship, then what did you  
15       do?

16              THE WITNESS: So after the Supreme Court  
17       fellowship, um, that was when I went to the Federal  
18       Public Defender Office because that was what I really  
19       wanted to do, and I got a lot of encouragement to do  
20       that from all of my supervisors at the AO, Kate Clark,  
21       Laura Miner, Jeffrey Maneri in the Supreme Court, the  
22       counselor's office. And so that's why I went then.

23              THE COURT: Well let me ask a personal question,  
24       but I simply want to get the timeline in mind.

25              And somewhere along here, either by now or after

1     you went to the Federal Defender's Office, you married  
2     Mr. Strickland. When was that?

3             THE WITNESS: That was in April of 2018.

4             THE COURT: While you were at the Federal Defender  
5     Office?

6             THE WITNESS: Um, yes, your Honor.

7             THE COURT: Okay. Now you've made various  
8     statements about that and the government's attorney has,  
9     um, interrogated you about that, and I'm not going to go  
10    into those things except to ask this.

11            Somewhere along the line here, um, after your --  
12    you had raised your complaint, it was arranged that you  
13    would have a clerkship for a judge in the Fourth  
14    Circuit, that's right, isn't it?

15            THE WITNESS: Um, yes, that's right.

16            THE COURT: And give me his name again?

17            THE WITNESS: Henry Floyd.

18            THE COURT: Henry Floyd.

19            Now, Judge Floyd, um, he, um, the Fourth Circuit,  
20    as I understand it, sits in Richmond, but he had home  
21    chambers. Where were his home chambers?

22            THE WITNESS: Um, Spartanburg, South Carolina.

23            THE COURT: Okay. And when you clerked for him,  
24    where did you live?

25            THE WITNESS: I lived in, um, just over the border

1 in Tryon, North Carolina.

2 THE COURT: In other words that was the marital  
3 home you were living in with your husband then?

4 THE WITNESS: Right, yes.

5 THE COURT: All right. And when he would sit with  
6 the court up in Richmond, would you go with him?

7 THE WITNESS: With the judge?

8 THE COURT: Yeah.

9 THE WITNESS: Oh, yes. Yes, I would.

10 THE COURT: A circuit judge has four clerks. Did  
11 you go every time he sat in Richmond?

12 THE WITNESS: Yes, and what I recall is we all  
13 went every time.

14 THE WITNESS: All right. And that was a year  
15 clerkship, is that right?

16 THE WITNESS: Um, it was -- that was not a  
17 full-year clerkship because by the time I got there I  
18 was replacing someone who had to leave mid-clerkship, so  
19 I think it was closer to five months. It was --

20 THE COURT: I see. I see. So --

21 THE WITNESS: I'm sorry if I don't get the dates  
22 exactly right, but --

23 THE COURT: No, no, I can check these things, but  
24 you're answering my questions.

25 And how did that go relative to your, um, the

1 other clerkships and work as a Supreme Court fellow, how  
2 did it -- again nothing of a specific about what you  
3 did, but how would you rate that clerkship?

4 THE WITNESS: How would I rate that clerkship? I  
5 mean it was --

6 THE COURT: Well I mean was it professionally  
7 fulfilling?

8 THE WITNESS: Yeah, I mean it was -- it was a  
9 happy experience, it was, um, I had very good  
10 relationships with the judge and the co-clerks and I  
11 enjoyed, um, traveling to Richmond. And, um, you know  
12 one thing they do is they make a point of everybody  
13 meeting each other and going out to dinner, so making  
14 sure everybody gets to know each other. So I  
15 appreciated that.

16 THE COURT: All right.

17 Now as that -- you knew that was only for the 5  
18 months to succeed the clerk who had to leave, and as  
19 that clerkship went along and you were looking ahead,  
20 how did you view your career path after the conclusion  
21 of that clerkship, what did you think was the way  
22 forward from there?

23 THE WITNESS: Well I mean to be completely honest  
24 with you, I was very very concerned about my career path  
25 going forward from there. The main reason why I took



1 the clerkship was not because I needed another  
2 clerkship, I mean I don't think I -- I was grateful for  
3 the clerkship, but I didn't need the clerkship for my  
4 resume necessarily, but I was very afraid of what I knew  
5 about that office and the way that they treated people,  
6 and I was very concerned about my reputation and what  
7 would be -- what would be said about me. I was very  
8 concerned that despite having a positive experience in  
9 the clerkship, that those, um, rumors and comments and  
10 things that were made would -- would not go away. And  
11 so I was very concerned in particular, wanting to stay  
12 in the criminal defense field, about how that would play  
13 out given how much power that office would still have,  
14 um, over my career and what I could do and what the  
15 options were.

16 So what I decided to do was to focus on, um, kind  
17 of re -- switch up, switch gears and focus on state  
18 public defense work, because those worlds don't  
19 really -- they don't really interact with each other and  
20 they don't collide. So -- and I'm oversimplifying a  
21 little bit, but, you know, I'm just trying to cut to the  
22 chase to answer your question. But that was why I  
23 needed to learn -- I mean obviously I knew a lot about  
24 appellate practice, but criminal law is different in  
25 every state and, um, appellate practice is different in

1 every state. And so I took a fellowship at the North  
2 Carolina Solicitor General's Office so I could learn how  
3 to practice in state court. And that was also a very  
4 positive experience, I had great relationships with --  
5 well a lot of respect for everybody that I worked with.

6 THE COURT: How long did that last?

7 THE WITNESS: Um, I'm trying to remember. That  
8 was -- I think that was about a year, like the other  
9 jobs. And what I decided was to, um, pursue -- you know  
10 I had done research and spoken to people at the, um,  
11 appellate Defender Office in Raleigh and that's when I  
12 decided, you know -- I mean partly I was -- because of  
13 what happened to me, I, um -- (Cries.) I was afraid to  
14 go work in an office again. So I decided -- (Cries.)

15 THE COURT: Well my question is -- my question --  
16 and I guess I'm not -- and this is why it's helpful to  
17 have you tell me, I'm a little unclear as to the  
18 sequence of things. That's my fault. I've got to sort  
19 that all out before I resolve anything here.

20 But do I understand that in fact you left the  
21 Federal Defender's Office for the Fourth Circuit  
22 clerkship and you never went back, or did you go back  
23 for a period?

24 THE WITNESS: I did not go back to the Federal  
25 Defender Office after --

1 THE COURT: Of course. All right. That --

2 THE WITNESS: Right.

3 THE COURT: That answers my question.

4 And when you left the Defender Office, it was to  
5 take this -- the remainder of the clerkship with Judge  
6 Floyd, have I got that right?

7 THE WITNESS: Yes, your Honor.

8 THE COURT: All right, those were my questions.

9 Now since I've asked questions, I must ask counsel  
10 if they have any questions about my questions.

11 So I'll ask Mr. Kolsky. Any questions about my  
12 questions or following up any of my questions?

13 MR. KOLSKY: No questions, your Honor.

14 THE COURT: None.

15 Mr. Strickland, any questions following up any of  
16 my questions?

17 MR. STRICKLAND: No, your Honor.

18 THE COURT: Thank you. You may step down.

19 And, um, Mr. Kolsky, the government may call the  
20 next witness.

21 MR. KOLSKY: Your Honor, the government calls  
22 James Ishida.

23 THE COURT: He may be called.

24 (JAMES ISHIDA, sworn.)  
25

1 \*\*\*\*\*

2 JAMES ISHIDA

3 \*\*\*\*\*

4  
5 DIRECT EXAMINATION BY MR. KOLSKY:

6 Q. Good morning, Mr. Ishida.

7 A. Good morning.

8 Q. Where are you currently employed?

9 A. I am the Circuit Executive for the Fourth Circuit  
10 in Richmond, Virginia.

11 Q. And how long have you been the Circuit Executive?

12 A. A little over 6 years, since October 2017.

13 Q. What are your duties as Circuit Executive?

14 A. I think you can think of me as the Chief  
15 Administrative Officer. My office has a number of  
16 administrative functions and we support the  
17 administrative needs of the courts throughout the Fourth  
18 Circuit.

19 Q. Have you ever served as the Circuit's employment  
20 Dispute Resolution Coordinator, or the EDR coordinator?

21 A. I did.

22 Q. And when were you the EDR coordinator?

23 A. Well I -- when I started in October of 2017, and I  
24 think I served the function until a couple of years,  
25 2019.

1 Q. What were your duties as the EDR coordinator?

2 A. Well the EDR coordinator is an impartial  
3 facilitator, my job encompassed, um, being an initial  
4 point of contact for people interested in the EDR  
5 process and their rights, and if a person initiates the  
6 EDR process, then I help facilitate that process. I try  
7 to find out what happened, what the concerns are, the  
8 issues are, and work as a facilitator and try to achieve  
9 a resolution.

10 Q. When you were the EDR coordinator, did you become  
11 aware of an allegation of sexual harassment by Caryn  
12 Strickland?

13 A. Yes, I did.

14 Q. How did you become aware of that allegation?

15 A. I think it was around August 14th, 2018, and I  
16 think I first, um, heard about it when I received a call  
17 from a Federal Public Defender, Tony Martinez.

18 (Interruption.)

19 THE COURT: We have lost the feed here.

20 MR. KOLSKY: I'm sorry, your Honor, we're just  
21 getting an exhibit to the witness.

22 THE COURT: That's fine. I haven't lost it. Very  
23 well.

24 (Pause.)

25 MR. KOLSKY: Your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 Q. Mr. Ishida, I've handed you what's currently  
4 marked as Defendant's Exhibit EP. Do you recognize this  
5 document?

6 A. Yes, I do.

7 Q. And what is it?

8 A. This is an e-mail from -- it's an e-mail string,  
9 the top part of it is from me to, um, Mr. Martinez, with  
10 a copy to then Chief Judge Roger Gregory, it's dated  
11 August 14th, 2018. And we talk about the plaintiff's  
12 allegations.

13 MR. KOLSKY: Your Honor, defendants move to admit  
14 Exhibit EP into evidence.

15 THE COURT: Any objection?

16 MS. STRICKLAND: Your Honor, we object.

17 THE COURT: It's hearsay, so that's for starters,  
18 so I can't admit it substantively.

19 What's the basis? Why is it relevant?

20 MR. KOLSKY: It shows the date that, um,  
21 Mr. Martinez forwarded plaintiff's allegations of sexual  
22 harassment to Mr. Ishida. It shows that that occurred  
23 on August 14th. And it shows that Mr. Ishida responded  
24 on that -- on that same day.

25 THE COURT: If it's --

1 MR. KOLSKY: We're not offering it for the truth.

2 THE COURT: Not for the truth, but simply for the  
3 date.

4 Any objection, Ms. Strickland, as limited?

5 MS. STRICKLAND: No, your Honor, as limited.

6 THE COURT: As limited.

7 EP is admitted Exhibit 158 in evidence.

8 (Exhibit 158, marked.)

9 THE COURT: Proceed.

10 Q. Mr. Ishida, what actions did you take after  
11 learning about Ms. Strickland's allegations of sexual  
12 harassment?

13 A. After I had received this and had discussions with  
14 Mr. Martinez about plaintiff's allegations of sexual  
15 harassment, I had talked to him about arranging for an  
16 investigation to look into the plaintiff's allegations.

17 Q. And did you notify anyone else of the allegation  
18 of sexual harassment?

19 A. On the e-mail I had copied Chief Judge Gregory.

20 Q. And you mentioned an investigation. What did you  
21 do to search for someone to conduct that investigation?

22 A. Well this would have been, um -- I construed this  
23 as a report of wrongful conduct under Chapter 9 of the  
24 Fourth Circuit's EDR plan, and under Chapter 9 of the  
25 plan it requires that an investigation be the Chief

1 Judge or the Unit Executive to ensure that an  
2 investigation would take place. Um, Chapter 9 also  
3 talked about, um, the human resources manager being one  
4 person who could fulfill that role.

5 So what I had done was I told Mr. Martinez that I  
6 would help get the investigator, so I reached out to the  
7 Clerk of Court in the District -- in the Western  
8 District of North Carolina for his recommendation and he  
9 had recommended, um, Heather Beam.

10 MS. STRICKLAND: Objection, hearsay.

11 THE COURT: Again you want that for the fact that  
12 that was said, not for the -- well the two are, um,  
13 inextricable. But the recommendation is a statement of,  
14 um -- it is it -- it is a assertive conduct, but it does  
15 stand for, um, what was said, and I'm going to admit it.

16 All right. He had recommended who?

17 THE WITNESS: He had recommend Heather Beam, your  
18 Honor.

19 THE COURT: Fine, that may stand.

20 Q. Did you take any further steps to, um, vet the  
21 recommendation of Heather Beam after that?

22 A. I did. I had, um, also checked with my head of  
23 HR, Kim LLewelyn, who was familiar with Ms. Beam and  
24 Ms. LLewelyn said --

25 MS. STRICKLAND: Objection, hearsay.



1 THE COURT: Sustained.

2 Q. Was Ms. Beam actually selected as the  
3 investigator?

4 A. She was.

5 Q. To what extent did Tony Martinez have a role in  
6 deciding who would be the investigator?

7 A. He had no role in deciding that.

8 MR. KOLSKY: Your Honor, may I approach the  
9 witness?

10 THE COURT: You may.

11 Q. Mr. Ishida, I've handed you what's currently  
12 marked as Defendants's Exhibit DG. Do you recognize  
13 this document?

14 A. Yes, I do.

15 Q. What is it?

16 A. Again it's an e-mail string from me to  
17 Mr. Martinez with a copy to Kim Llewelyn, it's dated  
18 August 14th, 2018, and it talks about the appointment of  
19 Heather Beam and a few other things.

20 MR. KOLSKY: Your Honor, defendants move to admit  
21 Exhibit DG into evidence.

22 THE COURT: Any objection?

23 MS. STRICKLAND: Your Honor, yes, on the same  
24 grounds of hearsay.

25 THE COURT: Well it is hearsay.

1           Mr. Kolsky?

2           MR. KOLSKY: Yes, so, your Honor, it reflects the  
3 process of selecting the investigator, it shows who was  
4 involved. I'm not offering it for, um, the truth of  
5 the --

6           THE COURT: You are offering it for the truth,  
7 just as you say it reflects the process. No, the  
8 objection is sustained.

9           MR. KOLSKY: Actually, your Honor, I'm informed  
10 that this is already admitted as Numbered Exhibit 18,  
11 according to the exhibit list we filed yesterday.

12          THE COURT: Well if it's admitted by agreement, it  
13 may be admitted. DG is by agreement, and before the  
14 Court, it doesn't mean anything more than that, as  
15 Exhibit 18, yes.

16          All right. Proceed.

17          (Exhibit 18, marked.)

18          MR. KOLSKY: Your Honor, may I approach the  
19 witness?

20          THE COURT: You may.

21          Q.     Mr. Ishida, I've handed you what I've marked as  
22 Defendants's Exhibit GL. Do you recognize this  
23 document?

24          A.     Yes, I do.

25          Q.     And what is it?

1       A.       It is an e-mail string from me to Mr. Martinez  
2       with a copy to Kim LLeWelyn. It talks about a number of  
3       steps Mr. Martinez took in response to the plaintiff's  
4       allegations of sexual harassment.

5               MR. KOLSKY: Your Honor, defendants move to admit  
6       Exhibit GL, and we're not offering it for the truth of  
7       the statements. This is an a mail to Mr. Martinez.  
8       Mr. Martinez's state of mind is an issue in this case  
9       and these are statements made to him by the Circuit  
10      Executive specifically without his response to  
11      Ms. Strickland. It goes to his understanding and his  
12      state of mind.

13             THE COURT: What you're saying is you want it in  
14      for the fact of notice to him of the matters contained  
15      therein?

16             MR. KOLSKY: Yes. So, for instance it says  
17      "Fantastic e-mail, Tony, I think you've done all you can  
18      to protect Ms. Devins." That's relevant to  
19      Mr. Martinez's state of mind at the time.

20             THE COURT: Limited to that, any objection,  
21      Ms. Strickland, so limited?

22             MS. STRICKLAND: Your Honor, we'd only object on  
23      the basis of -- I don't know how James Ishida would have  
24      personal knowledge that Tony has done all he can to  
25      protect Ms. Devens, he wouldn't have personal knowledge

1 of --

2 THE COURT: Well that's -- yes, that goes to the  
3 weight though, not to the admissibility as limited. I  
4 mean if he fired that off as comfort to Martinez and  
5 Martinez took it as comforting, that may be relevant  
6 here, and it's open to you folks to argue that he had no  
7 basis -- he, Mr. Ishida, had no basis or an inadequate  
8 basis for sending such a comforting e-mail.

9 As limited I'm going to admit it and it will be  
10 Exhibit 159 in evidence, as limited.

11 (Exhibit 159, marked.)

12 MR. KOLSKY: Mr. Spears, please display Exhibit  
13 GO, which is now Exhibit 159.

14 (On screen.)

15 Q. Mr. Ishida, when you wrote "I think you've done  
16 all you can to protect Ms. Devins," what did you mean by  
17 that?

18 A. Well from what was communicated to me about  
19 plaintiff's concerns and, um, you know the concerns  
20 about her safety, the concerns about contact with her  
21 then supervisor, JP Davis, and the express concerns that  
22 I understood that she had expressed to Mr. Martinez, um,  
23 when I looked at what Mr. Martinez had done, I thought  
24 that what he did was he addressed, to the best of his  
25 ability, the plaintiff's concerns, and that's why I

1 thought that he's done, you know, all he could to  
2 address the concerns at that time.

3 Q. And at that time were you aware of the actions  
4 that Tony Martinez took to protect Ms. Strickland from  
5 the alleged harassment?

6 A. Yes, I was.

7 Q. And what were those actions?

8 A. Well, one, he, um, had taken -- he had changed his  
9 organizational chart to take Ms. Devins out of the chain  
10 of command, he --

11 MS. STRICKLAND: Your Honor, objection, personal  
12 knowledge. He doesn't know what Tony --

13 THE COURT: Wait. Wait. Wait. I follow every  
14 question, Ms. Strickland, it's not necessary to argue.  
15 If you think I've made a ruling that's ill-informed, you  
16 may ask to argue.

17 The objection's sustained on precisely those  
18 grounds. He says, um -- this is substantive for what  
19 Martinez says he has done. He doesn't know what  
20 Martinez has done except for what he's been told. So  
21 substantively that can't come in. Sustained. I mean I  
22 haven't heard that he went down to Richmond to check  
23 this all out. It's not in evidence.

24 Put another question.

25 MR. KOLSKY: You can take that down now.

1 (Off screen.)

2 Q. Mr. Ishida, can you explain the difference between  
3 Chapter 9 and Chapter 10 of the EDR plan?

4 A. Of course. So under the Fourth Circuit's EDR  
5 plan, under Chapter 9, someone that, um, has, say, heard  
6 or witnessed a perceived, um, an act of wrongful conduct  
7 -- and Chapter 9 provides a vehicle or a mechanism to  
8 report that to a number of officials, and then once the  
9 officials receive it, namely the EDR coordinator, I am  
10 in turn then responsible for communicating that to the  
11 Chief Judge and the Unit Executive, who then must ensure  
12 that an investigation is conducted to look into the  
13 report, and then upon the conclusion of the  
14 investigation, appropriate action taken. And so if you  
15 think of a process akin to if you see -- "If you see  
16 something, say something," Chapter 9 is assigned to  
17 provide that vehicle to process that, um, what was seen  
18 and what was reported.

19 Chapter 10, on the other hand, is when someone  
20 experiences an alleged act of wrongful conduct and they  
21 are seeking redress or personal relief, they can  
22 initiate Chapter 10 of the EDR process, and then we go  
23 through the process of resolving it and, um, you know  
24 seeking resolution and relief of the person's, you know,  
25 concerns and issues and allegations.

1 Q. To what extent does Chapter 9 confer rights on a  
2 person making a report of wrongful conduct?

3 A. It doesn't confer any rights.

4 Q. Did Ms. Strickland ever pursue her rights under  
5 Chapter 10?

6 A. She did.

7 Q. And when did that occur?

8 A. On September 10th, 2018, the plaintiff had filed  
9 both a report -- she made a report of wrongful conduct  
10 under Chapter 9 as well as a request for counseling  
11 under Chapter 10.

12 MR. KOLSKY: Your Honor, may I approach the  
13 witness?

14 THE COURT: You may.

15 Q. Mr. Ishida, I've handed you what's currently  
16 marked as Defendants's Exhibit DS. Do you recognize  
17 this document?

18 A. Yes, I do.

19 Q. And what is it?

20 A. It is an e-mail string, um, between me and the  
21 plaintiff, with a copy to Heather Beam, the last entry  
22 of this is dated September 28th, 2018, and it talks  
23 about the counseling process and the investigation and  
24 then the end of the procedures going forward.

25 MR. KOLSKY: Your Honor, the government moves to

1 admit Exhibit DS into evidence.

2 THE COURT: Any objection?

3 MS. STRICKLAND: Objection, yes, on hearsay  
4 grounds. I'd also note we have a 106 objection and we,  
5 um, would like the opportunity to, um, submit further  
6 proof pursuant to the parties's joint agreement.

7 THE COURT: Well it's not in yet. But if you get  
8 the opportunity to submit further proof, are you okay  
9 with it?

10 MS. STRICKLAND: Um, we would maintain our hearsay  
11 objection.

12 THE COURT: All right.

13 MR. KOLSKY: Your Honor --

14 THE COURT: What do you say to that, why is this  
15 e-mail string relevant for the facts of --

16 MR. KOLSKY: So Ms. Strickland has alleged that --

17 THE COURT: Go ahead.

18 MR. KOLSKY: So Ms. Strickland has alleged that  
19 the investigator did not investigate the allegations of  
20 retaliation, um, this is -- this e-mail shows that, um,  
21 Mr. Ishida in fact did instruct the investigator to  
22 investigate those allegations.

23 THE COURT: For the fact of the --

24 MS. STRICKLAND: It sounds like it's --

25 THE COURT: For the fact of the instructions,



1 limited to that, it's relevant.

2 MR. KOLSKY: Right.

3 THE COURT: So limited to that, it's admitted.

4 What do you, um, want in the way of further  
5 evidence that might be tied to this Exhibit 160,  
6 Ms. Strickland?

7 MS. STRICKLAND: Oh, I'm sorry, we would need to  
8 review that. We just -- I think the parties -- if I  
9 understand correctly, we agreed that we would have an  
10 opportunity to submit 106 evidence, so we would just  
11 preserve that, um, that potential objection.

12 THE COURT: I understand that.

13 All right, so as limited it's in evidence, Exhibit  
14 160, as to the nature of his instructions.

15 (Exhibit 160, marked.)

16 Q. Mr. Ishida, what are the different phases of a  
17 Chapter 10 EDR proceeding?

18 A. There are three distinct phases in a Chapter 10  
19 EDR proceeding. It starts with a counseling phase, and  
20 if that's not successful and it's, you know, being  
21 pursued, then there could be a mediation phase after  
22 that, and if that's not successful and the individual  
23 wants to pursue it, then there's a formal complaint  
24 stage.

25 Q. Did Ms. Strickland complete the counseling phase

1 in her Chapter 10 proceeding?

2 A. She did.

3 Q. Did Ms. Strickland complete the mediation phase in  
4 her Chapter 10 proceeding?

5 A. Um, partially. We were in mediation when  
6 Ms. Strickland withdrew her EDR claim.

7 Q. Did Ms. Strickland ever proceed to the formal  
8 complaint stage under Chapter 10?

9 A. She did not.

10 Q. Did Ms. Strickland request any extensions of time  
11 during the EDR process?

12 A. She did.

13 Q. Do you recall if it was more than one?

14 A. It was at least three, in the counseling phase.

15 Q. And were those granted?

16 A. Um, yes. The last one Chief Judge Gregory granted  
17 in part and he didn't extend completely. So under his  
18 order, the counseling phase would have ended on January  
19 14th, 2019.

20 Q. To what extent did you -- did you speak to  
21 Ms. Strickland, by phone or in person, during her EDR  
22 process?

23 A. I couldn't give you a count, it was -- you know it  
24 was too numerous to count.

25 Q. To what extent did you communicate with

1 Ms. Strickland through e-mail during her EDR process?

2 A. Oh, it was voluminous. Again it was too many to  
3 count.

4 Q. What was the purpose of your conversations and  
5 e-mails with Ms. Strickland during the EDR process?

6 A. Well sometimes I would, um, let her know what  
7 developments had happened or what phases we were in.  
8 Most of it was answering questions and her inquiries  
9 about the process, about what certain things mean, and I  
10 -- you know it was basically responding to a variety of  
11 questions she had.

12 Q. To what extent did Ms. Strickland's EDR process  
13 follow the requirements of the EDR plan?

14 A. We followed it scrupulously.

15 MS. STRICKLAND: Your Honor, objection, that's  
16 opinion testimony, that's a legal issue in this case.

17 THE COURT: Well he's entitled to give his view  
18 and it goes to the weight. I'll evaluate it. It may  
19 stand.

20 Q. Mr. Ishida, do you recall Ms. Strickland  
21 requesting that Tony Martinez be disqualified from  
22 participating in her EDR process?

23 A. Yes, I do.

24 Q. Did you ever ask Heather Beam for her thoughts on  
25 whether Mr. Martinez should be disqualified?

1 A. Yes, I did.

2 Q. When was that?

3 A. That was, um -- it was on January 13th, 2019.

4 Q. And why did you ask Ms. Beam for her thoughts on  
5 the disqualification question?

6 A. Well the plaintiff had filed a request to  
7 disqualify Mr. Martinez on the same day that she filed  
8 her Chapter 9 and Chapter 10 requests, and so one of the  
9 things -- and I talked to Chief Judge Gregory about  
10 this. One of the things that Judge Gregory wanted to do  
11 was he --

12 MS. STRICKLAND: Objection, hearsay.

13 THE COURT: Yeah, sustained. But you may answer  
14 the question.

15 His question was --

16 Q. Chief Judge Gregory wanted to --

17 THE COURT: No, you may answer the question about  
18 why you asked Ms. Beam for her views, you may tell us  
19 that. But if it's based on something that Judge Gregory  
20 told you, you're going to have to say "based upon my  
21 discussions with Judge Gregory," et cetera. Do you  
22 follow, Mr. Ishida? Her objection is timely and  
23 appropriate. You can't tell me what other people told  
24 you, but you can -- it's a "why" question, so you can  
25 tell me why you asked Ms. Beam for her views about the

1 status of Mr. Martinez.

2 THE WITNESS: Of course, Judge. Thank you.

3 A. Well she had conducted the investigation and one  
4 of the things that I was interested in is she was -- she  
5 had met with everyone, she had seen, you know talked to  
6 people, and so I just wanted her views on -- on you know  
7 what she thought of, you know -- did she see any reason  
8 that Mr. Martinez should be disqualified.

9 Q. And what was Ms. Beam's response?

10 A. She -- she said that, um -- well she had thought  
11 that Mr. Martinez should be disqualified and she said  
12 that, um -- in talking to Mr. Martinez, she felt that,  
13 um, you know Mr. Martinez was biased, particularly with  
14 the allegation of sexual harassment.

15 Q. And what did you do after you received Ms. Beam's  
16 response?

17 A. So I thanked her for that. What I did was I had  
18 raised that issue with the AO's Office of Chief Counsel,  
19 I wanted them to weigh in on that, um --

20 Q. And just to be clear, I'm not asking for you to  
21 disclose the advice that you received.

22 A. Right, but I -- but this is what I did in response  
23 to -- that I wanted to get the General Counsel's view on  
24 that. And, um -- and, um, I had further discussions.

25 Q. Did you agree with the --

1 THE COURT: As best you can --

2 Excuse me, Mr. Kolsky, let me just probe the  
3 witness a moment.

4 As best you can recall, sir, could you tell me  
5 what Ms. Beam said? No one expects you to have a  
6 photographic memory or a transcript, but what did she  
7 say?

8 THE WITNESS: Judge, as best as I can recall from  
9 that e-mail exchange, um, Ms. Beam said that she was  
10 concerned because she felt that Mr. Martinez --

11 MS. STRICKLAND: Your Honor, I'm going to object  
12 on grounds of -- oh, I'm sorry.

13 THE COURT: No, I think I -- I think I misspoke  
14 and that's because I thought you were talking to her.

15 You didn't talk to her, you e-mailed her and she  
16 responded, is that the way it worked?

17 THE WITNESS: It did, but I think I had --

18 THE COURT: You had a discussion with her?

19 THE WITNESS: I was trying to arrange a follow-up  
20 discussion, your Honor, but I don't recall if I did or  
21 not.

22 THE COURT: I see. So what she said I'm going to  
23 see in the e-mail string and that's in evidence, so I --  
24 I should not have interrupted.

25 Go ahead, Mr. Kolsky.

1 Q. Mr. Ishida, did you agree with Ms. Beam's concerns  
2 about Mr. Martinez participating in the EDR case?

3 A. I did not.

4 Q. And why not?

5 A. So we have to remember when this happened. So on  
6 January 11th, 2019, Ms. Beam filed her amended  
7 investigation report, which I read, and then two days  
8 later I reached out to Ms. Beam to ask her for her views  
9 on the disqualification issue.

10 So Ms. Beam was concerned that Mr. Martinez was  
11 biased. I didn't agree with that for the simple reason  
12 that I didn't see bias. And so, um, what I saw was  
13 Mr. Martinez, you know -- well let me take a step back.

14 Ms. Beam was concerned about bias because she felt  
15 that Mr. Martinez, um, maybe no longer believed or the  
16 plaintiff had inflated her claims of sexual harassment  
17 as a ploy to get reassigned to the Asheville office, and  
18 so that's why -- from my reading of the e-mail, that's  
19 why Ms. Beam felt that Mr. Martinez was biased. That he  
20 was no longer a neutral party, no longer looking at  
21 this, but he was somehow convinced in his mind that the  
22 plaintiff was just scheming to get to the Asheville  
23 office. But again that was not my experience with  
24 Mr. Martinez.

25 Mr. Martinez had always, um, you know acted in

1 good faith, he was diligent, he was very responsive to  
2 the plaintiff's concerns, he treated them as such, and  
3 if Mr. Martinez had harbored that view, he never  
4 communicated that to me. And in fact everything I saw  
5 and everything I dealt with him, he was very responsive,  
6 very concerned about the plaintiff's allegations, and  
7 was working towards, you know, addressing them and  
8 resolving them. So that's why I did not personally see  
9 this bias in Mr. Martinez.

10 Q. Was Mr. Martinez required to be neutral, um, given  
11 his role in the EDR proceeding?

12 A. No. No, in fact if Mr. Martinez --

13 MS. STRICKLAND: Objection, lacks foundation.

14 THE COURT: No, no, he's not -- overruled. He's  
15 now asked for his interpretation of the EDR plan and I  
16 want to hear him. He may answer.

17 And you're answering the question was he required  
18 to be biased? You started out saying no, and then you  
19 were giving a more nuanced interpretation. And I'm  
20 interested in your interpretation, sir.

21 Go ahead.

22 THE WITNESS: Yes, your Honor.

23 A. So Mr. Martinez, as the Unit Executive, would have  
24 represented the employing office, and so if he didn't  
25 act in that fashion, I would question whether or not



1 he's doing a good job representing his employing office.

2 MR. KOLSKY: Your Honor, may I approach the  
3 witness?

4 THE COURT: You may.

5 Q. Mr. Ishida, I've handed you what's currently  
6 marked as Defendants's Exhibit EF.

7 A. (Looks.)

8 Q. Do you recognize this document?

9 A. Yes, I do.

10 Q. And what is it?

11 A. It's an e-mail string between me, the plaintiff,  
12 and the top portion is dated November 28th, 2018, and  
13 we're just talking about questions that the plaintiff  
14 had about the EDR process.

15 MR. KOLSKY: Your Honor, defendants move to admit  
16 Exhibit EF.

17 THE COURT: The parties to this e-mail string are?

18 MR. KOLSKY: Ms. Devins and Mr. Ishida. There's  
19 another person copied and that is redacted. I'm not  
20 sure -- I believe that may be Chief Judge Gregory, but  
21 I'm not certain.

22 THE COURT: All right.

23 Any objection?

24 MS. STRICKLAND: Oh, just the same hearsay  
25 objection. There are other e-mails.

1           THE COURT: Why are these communications relevant  
2 as communications?

3           MR. KOLSKY: All right. So for one thing it shows  
4 that Mr. Ishida was communicating and answering  
5 questions that Ms. Strickland raised. Also on the  
6 second page there is a request by Ms. Devins for  
7 assistance transitioning out of the, um, the Federal  
8 Defender's Office. And these are -- Ms. Strickland's  
9 statements are admissions by a party opponent, so those  
10 would not be hearsay.

11          THE COURT: Well, that's correct. That's correct.  
12 And therefore it is admitted, her statements are  
13 admitted as admissions. And we will admit this as  
14 Exhibit 161.

15          (Exhibit 161, marked.)

16 Q. Mr. Ishida, if you would please turn to Page 2 of  
17 this document.

18 A. (Turns.)

19 Q. There's a statement by Ms. Strickland in the  
20 center of the page that says "I would appreciate the  
21 courts assistance in transitioning me out of  
22 Mr. Martinez's office," and that's dated November 21st,  
23 2018. Do you see that?

24 A. Yes, I do.

25 Q. What did you do after receiving that request from

1 Ms. Strickland?

2 A. I had a conversation with Chief Judge Gregory and  
3 after that, um, I had further discussions with plaintiff  
4 about the type of position she was interested in, but I  
5 began inquiry into looking into possible other offices.

6 Q. And what sorts of inquiries did you make?

7 A. The plaintiff was particularly interested in  
8 another Federal Public Defender office in the Fourth  
9 Circuit, particularity the, um, you know the FPD office  
10 in the Western District of Virginia, so I reached out to  
11 the Defender and asked if she was, um -- if she had an  
12 opening and would be interested in plaintiff coming to  
13 her office.

14 Q. And did you reach out to any other potential  
15 employers on behalf of Ms. Strickland?

16 A. As for the Federal Public Defender offices, no,  
17 because I did not get permission from the plaintiff to  
18 pursue other offices. With respect to other judges,  
19 yes, I did, I checked with other Circuit Judges on the  
20 Fourth Circuit.

21 MR. KOLSKY: Your Honor, may I approach the  
22 witness?

23 THE COURT: You may.

24 Q. I've handed you what's currently been marked as  
25 Defendants's DK. Do you recognize this document?

1 A. Yes, I do.

2 Q. And what is it?

3 A. This is an e-mail from the plaintiff to me, which  
4 is dated March 11th, 2019, in which the plaintiff says  
5 that she is accepting the clerkship with Judge Floyd,  
6 she expresses great appreciation for our help in  
7 securing the clerkship, and as a result she is, um --  
8 she says that she is no longer interested in pursuing  
9 her charge and EDR claim.

10 MR. KOLSKY: Your Honor, defendants move to admit  
11 Exhibit DK.

12 THE COURT: No objection?

13 MS. STRICKLAND: No objection, your Honor.

14 THE COURT: It's admitted Exhibit 162 in evidence.  
15 (Exhibit 162, marked.)

16 MR. KOLSKY: Mr. Spears, would you please display  
17 Exhibit DK now, Exhibit 162.

18 (On screen.)

19 Q. Mr. Ishida, what was your reaction when you  
20 received this e-mail?

21 A. Well I was -- I was, um -- I was happy for the  
22 plaintiff and I was -- I was elated that we had, um,  
23 gotten a resolution that the plaintiff was excited about  
24 and happy and looking forward to.

25 MS. STRICKLAND: Objection, your Honor, this lacks

1 foundation, it lacks personal knowledge.

2 THE COURT: Well he's telling me his reaction to  
3 your e-mail and it may stand. That was his reaction. I  
4 know he can't speak for what's in your mind, he's  
5 telling you what he thought was in your mind.

6 Q. Mr. Ishida, what were your overall impressions of  
7 how Mr. Martinez responded to Ms. Strickland's claim of  
8 sexual harassment?

9 A. Well I thought Mr. Martinez was very  
10 conscientious, very diligent, um, he acted in good  
11 faith, he was very responsive. He was overall very  
12 concerned for the plaintiff and in protecting the  
13 plaintiff and he wanted to make sure he did the right  
14 thing.

15 Q. Did you receive a final investigation report from  
16 Heather Beam?

17 A. Yes, I did.

18 Q. What were the report's findings regarding the  
19 allegations of sexual harassment by JP Davis?

20 THE COURT: Well the document's in --

21 A. So the, um --

22 THE COURT: Wait. Wait. The document's is  
23 evidence, isn't it, the final report?

24 MR. KOLSKY: Yes, your Honor.

25 THE COURT: Well you can expect I've read it and

1 will read it again. The document speaks for itself.

2 MR. KOLSKY: Thank you. I'll move on, your Honor.

3 THE COURT: All right.

4 (Pause.)

5 MR. KOLSKY: Your Honor, may I approach the  
6 witness?

7 THE COURT: You may.

8 Q. Mr. Ishida, I've handed you Exhibit 7, which is  
9 already in evidence.

10 MR. KOLSKY: Mr. Spears, please display EX 007.

11 (On screen.)

12 MR. KOLSKY: We appear to have lost the video  
13 feed, your Honor.

14 THE COURT: Well I have it.

15 MS. STRICKLAND: It's back up, your Honor.

16 MR. KOLSKY: All right.

17 Q. Mr. Ishida, do you recognize this document?

18 A. Yes, I do.

19 Q. And what is it?

20 A. This is a letter of counseling to Mr. Martinez  
21 which is dated May 28th, 2019.

22 Q. And what was your role, if any, in preparing this  
23 letter?

24 A. I drafted the letter at the direction of Chief  
25 Judge Gregory.

1 Q. And what was your role in delivering the letter to  
2 Mr. Martinez?

3 A. I had, um, sent him this letter, but the week  
4 before I had also had the chance to, um, meet with  
5 Mr. Martinez at a conference. The interesting footnote  
6 to that was this was a Fourth Circuit workplace conduct  
7 conference.

8 Q. What do you recall about your conversation with --  
9 MS. STRICKLAND: Objection, hearsay.

10 THE COURT: It looks like it's --

11 MR. KOLSKY: Again it goes to --

12 THE COURT: Yes, I'll hear you. Why? Because  
13 it's hearsay.

14 MR. KOLSKY: Well this -- I'll withdraw the  
15 question, your Honor.

16 THE COURT: Withdrawn.

17 Q. All right. Now I'm sure you heard Ms. Strickland  
18 and her counsel refer to this as a "letter of reprimand"  
19 during this trial. So to be clear, is this a letter of  
20 reprimand or a letter of counseling?

21 A. This is not a letter of reprimand, this is a  
22 letter of counseling.

23 Q. What is the difference between --

24 MS. STRICKLAND: Objection, your Honor.

25 THE COURT: Wait. Wait a minute.

1 MS. STRICKLAND: It lacks foundation.

2 THE COURT: No, he gave -- this is testimony,  
3 you'll have a chance to cross-examine.

4 You're asking him the difference between the two.  
5 You may do it.

6 Q. What is the difference between a letter of  
7 counseling and a letter of reprimand?

8 A. Well, um, a letter of reprimand would be a harsh  
9 rebuke or a censure.

10 MS. STRICKLAND: Objection, lacks foundation.

11 THE COURT: Well he's the Circuit Executive,  
12 overruled.

13 You may finish your answer.

14 Q. You may continue.

15 A. So a letter of reprimand would be a harsh rebuke  
16 or censure, whereas a letter of counseling would be, you  
17 know, it's not punitive, it's corrective. And, um, I  
18 had styled it accordingly.

19 Q. And what was the purpose of this letter?

20 A. It was to advise Mr. Martinez of the findings of  
21 the investigation. It was to also identify a number of  
22 missteps that Mr. Martinez had made. And the idea was  
23 to, um, bring those to Mr. Martinez's attention for  
24 reflection and hopefully that he would, you know,  
25 understand the missteps that he made, work on it, and



1 not repeat them in the future. So it was -- we wanted  
2 to make sure that Mr. Martinez knew or understood the  
3 mistakes he had made in this case.

4 Q. And you referred to "missteps." Can you briefly  
5 summarize the missteps that were addressed in your  
6 letter?

7 A. So, um, there were a number of things that  
8 Mr. Martinez had said, he was well-meaning,  
9 well-intended, but the effect wasn't, you know, very  
10 helpful. For example, he used a marriage metaphor to  
11 describe the relationship between the plaintiff and her  
12 then supervisor JP Davis. Mr. Martinez, his intention  
13 was good, he wanted to, um, suggest to the plaintiff and  
14 her -- and to Mr. Davis that, you know, like a marriage  
15 it's --

16 MS. STRICKLAND: Objection, lacks foundation.

17 THE COURT: This is the man who drafted the  
18 letter. No, overruled. He drafted the letter. He's  
19 simply telling us what's in his mind. He himself  
20 identified this use of the marriage metaphor as a  
21 "misstep." He's now being asked by defense counsel to  
22 expand on that. I'll permit it.

23 Go ahead, sir.

24 A. So Mr. Martinez was well-intended. His point was,  
25 um, he was trying to encourage the plaintiff to work

1 with her supervisor to keep lines of communication open,  
2 compromise where necessary. And so that was -- that was  
3 his intention. It was well-meaning. But in the context  
4 of this case, using the marriage metaphor was probably  
5 not the wisest thing and had caused plaintiff some  
6 distress.

7 Q. Did your letter conclude that Mr. Martinez had  
8 failed to take appropriate actions to protect  
9 Ms. Strickland from the alleged sexual harassment?

10 A. No, it did not.

11 Q. Did your letter contain any finding of wrongful  
12 conduct under the EDR plan?

13 A. No, it does not.

14 Q. Why did you reference the wrongful conduct  
15 standard in the letter?

16 A. So at the time I drafted the letter, other than  
17 Chapter 9, this was the only provision that talked about  
18 what happened after the investigation, and you know I  
19 just wanted to -- to provide a reason to Mr. Martinez  
20 why he was being counseled. Now if I could go back in  
21 time and, you know, look at the letter again, I probably  
22 would not have used those choice of words. But that was  
23 the reason why I did it. I just wanted to provide a  
24 justification why this letter of counseling was being  
25 sent to Mr. Martinez.

1 Q. Why did Mr. Martinez's missteps that were  
2 addressed in the letter not amount to wrongful conduct  
3 under the EDR plan?

4 A. Well in the investigation report the -- the more  
5 serious allegations of retaliation and sexual harassment  
6 were just not founded. In addition, there were  
7 mitigating factors that went to Mr. Martinez's -- he  
8 was -- he acted in good faith, he was, you know,  
9 responsive, he was -- you know he acted with -- I mean  
10 he tried to do the right thing. So in a sense, um,  
11 Mr. Martinez was exonerated on the serious allegations.  
12 But some of the statements that he made were not helpful  
13 and had caused some distress to the plaintiff.

14 And so what we were interested in is, um, okay  
15 even though Mr. Martinez was not -- there was no  
16 evidence of retaliation and there was no objective  
17 evidence to support the allegation of sexual harassment,  
18 we wanted to make sure that Mr. Martinez understood that  
19 what he did was not helpful and caused plaintiff  
20 distress. And again, looking at the broader picture,  
21 Chief Judge Gregory was very concerned about workplace  
22 conduct and --

23 MS. STRICKLAND: Objection, hearsay.

24 THE COURT: Well I won't accept that as a -- it's  
25 a conclusory statement about what's in the mind of

1 another person and I'll strike it.

2 Put another question, Mr. Kolsky.

3 THE WITNESS: Well, Judge, may I just finish my  
4 impression?

5 THE COURT: You may. I interrupted.

6 A. This was a -- please forgive me, I misspoke.

7 It was certainly important to me that we create  
8 exemplary workplaces throughout the Fourth Circuit, and  
9 so here was an opportunity, a teaching opportunity to  
10 talk to Mr. Martinez about his missteps, have him  
11 reflect on it, and hopefully learn from it, and not make  
12 the same mistakes going forward.

13 (Pause.)

14 MR. KOLSKY: No further questions.

15 THE COURT: Ms. Strickland, do you wish to examine  
16 this witness?

17 MS. STRICKLAND: Yes, your Honor, thank you.

18 I'd like to keep Exhibit 7 on the screen and start  
19 with that, please.

20

21 CROSS-EXAMINATION BY MS. STRICKLAND:

22 Q. Does this letter state "Ms. Strickland explains  
23 that Mr. Davis subjected her to unwanted advances,  
24 unreasonably interfered with her work assignments, and  
25 even proposed an unsavory quid-pro-quo proposal on her

1 request for a promotion and raise." Is that an accurate  
2 statement from that letter? And I apologize, I'm on  
3 Page 1 under the background section, the first  
4 paragraph.

5 A. I'm sorry, the page?

6 Q. The first page of the document.

7 A. Okay.

8 Q. Under "Section Background"?

9 A. Okay.

10 Q. Where it says "September 10th." Go down that  
11 paragraph and it says "Ms. Strickland explains that  
12 Mr. Davis subjected her to unwanted advances,  
13 unreasonably interfered with her work assignments, and  
14 even proposed an unsavory quid-pro-quo proposal on her  
15 request for a promotion and raise."

16 I that an accurate statement from that letter?

17 A. That was a summary of what I believed your  
18 allegations were.

19 Q. Did you use the words "unsavory quid-pro-quo  
20 proposal on her request for a promotion and a raise"?

21 A. I'm sorry, I don't understand the question?

22 Q. Did you testify that you drafted this letter?

23 A. Yes, I did.

24 Q. Did you use the words "That he proposed an  
25 unsavory quid-pro-quo proposal on her request for a

1 promotion and raise"?

2 A. Well again this is a summary --

3 Q. I'm just asking for a "yes" or "no" answer,  
4 please.

5 A. Again this is a summary of your allegations.

6 Q. Is that what your letter states?

7 A. The --

8 THE COURT: Well the letter is before the Court  
9 and it says what it says, he -- in answer to your  
10 question, he explains that that's a recitation of your  
11 allegations, and that's how I'm taking it.

12 Go ahead.

13 MS. STRICKLAND: Yes, your Honor.

14 Q. But the word "unsavory," was that included  
15 specifically in the allegations to your recollection?

16 A. Again I was trying to summarize the allegations.

17 THE COURT: Well she's asked a different question  
18 now. Do you recall her using that word in any of her  
19 recitations -- any of her allegations? Excuse me.

20 A. Um, at the moment I don't recall if you used that  
21 word or not.

22 Q. Didn't you put the words "unsavory quid-pro-quo  
23 proposal" in this letter?

24 A. It's in the letter.

25 Q. Yes. Thank you. Turn to page -- to the second

1 page, it's marked Page 3 on the ECF stamp.

2 A. (Turns.)

3 Q. So in the italicized block where it says "Ms. Beam  
4 explains," "For example, Karen states when she initially  
5 brought her complaint to Mr. Martinez, he compared her  
6 relationship with the First Assistant Defender as a  
7 'marriage' and asked her to compromise. He also made  
8 comments on Karen's report such as 'at least she was not  
9 touched' and called her out on contacting the AO to  
10 receive guidance on her civil rights as a federal  
11 employee. He also stated he was being blamed for  
12 something that was not his fault.

13 It is evident this claim was mishandled from the  
14 beginning by Mr. Martinez and he would benefit greatly  
15 with additional training on workplace conduct as well as  
16 basic managerial/leadership skills."

17 Is that an accurate statement from that letter?

18 A. This is -- this is a quote from the investigation  
19 report.

20 Q. Right. Is it your position today that none of  
21 that is discriminatory conduct?

22 A. Um, sorry, I'm not sure what you're asking me?

23 THE COURT: As I understand your question --

24 Q. Is your position to --

25 THE COURT: Wait. Wait. Wait.

1           As I understand your question, it is if that were  
2       so, these allegations -- is it your position that that  
3       is not -- well you called it "discriminatory conduct" --  
4       well, yes, discriminatory conduct on the basis of her  
5       gender? I think that's the question. And I'll ask it.  
6       Is that your position?

7           MS. STRICKLAND: Yes, your Honor.

8           THE COURT: Is that your position? If proved.

9       A.     (Silence.)

10          MR. KOLSKY: Your Honor, we object, that that  
11       calls for a legal conclusion.

12          THE COURT: Overruled.

13          MS. STRICKLAND: Your Honor, he testified --

14          THE COURT: Wait a minute, you just won that one.

15          MS. STRICKLAND: Oh, I apologize.

16          THE COURT: Okay, now I'm going to let him answer  
17       it, I think.

18          As I have allowed him to explain the Fourth  
19       Circuit's EDR plan -- and now that question is both  
20       appropriate and he can explain it, if proved -- and it's  
21       the Court's question.

22          If proved, is that conduct, as you summarize it  
23       there, sir, um, discriminatory conduct on the basis of  
24       gender?

25          THE WITNESS: (Pause.) Well if these allegations



1 are true, um, you know what I read from the  
2 investigation report was that like, for example, that I  
3 know one of the -- one of the, um, missteps that  
4 Mr. Martinez was -- had made was he shifted blame, and I  
5 didn't really see that as being discriminatory, more a  
6 thought that Mr. Martinez was, you know, not being  
7 accountable or not responsible. So I didn't see that as  
8 discriminatory.

9 THE COURT: Wait, now that --

10 MS. STRICKLAND: How about a comment that --

11 THE COURT: Wait. Wait. You may ask questions,  
12 but now I've asked one and I'm going to get to follow up  
13 my question. Excuse me.

14 Mr. Ishida, she listed for you various conduct in  
15 her question. That's all I'm limited to. And I'm  
16 asking the question now.

17 Assume that conduct, which is included in your  
18 summary in this counseling letter, was proven to be  
19 true, is that not discriminatory conduct on the basis of  
20 gender? That's all. But I'm asking it. Don't you  
21 think it is? If proved.

22 THE WITNESS: (Pause.) Yes, your Honor. I guess,  
23 you know, it doesn't necessarily go to any kind of  
24 discrimination, I think it goes to his conduct, which  
25 when you view it, it's -- it's not gender-based, there

1 is some alternate explanation and concern.

2 THE COURT: That's your answer.

3 Go ahead, Ms. Strickland.

4 MS. STRICKLAND: Thank you, your Honor.

5 Q. Under Subparagraph A where it says "Marriage  
6 Metaphor," this letter says, you say, "Though  
7 well-intended," you had not abided by Ms. Strickland's  
8 wishes that she meet with you privately to discuss  
9 Mr. Davis's conduct? In this letter are you referring  
10 to the fact that I, Ms. Strickland, the plaintiff, had  
11 raised concerns with Mr. Martinez about Mr. Davis's  
12 conduct?

13 A. Again I'm not sure what you're asking me?

14 Q. Is this letter acknowledging the fact that  
15 concerns were raised with Mr. Martinez about Mr. Davis's  
16 conduct?

17 A. By this sentence?

18 Q. In this paragraph, "Marriage Metaphor," it says  
19 "She was troubled" -- I'm sorry. If you go to the last  
20 paragraph of "Marriage Metaphor," the last sentence,  
21 "The marriage metaphor was especially inappropriate  
22 given the context that Ms. Strickland had raised  
23 concerns with Mr. Davis's behavior towards her."

24 Is that an accurate statement of what is in this  
25 letter?

1       A.       Well again, as I said, with Mr. Martinez, his  
2       point was about working together and compromising and,  
3       um, it was inappropriate, because using the -- I mean  
4       the point was well-meaning, the point was well-intended,  
5       but using the marriage metaphor to describe your  
6       relationship with JP Davis was not helpful.

7       Q.       Thank you, I'm just asking whether that statement  
8       is inaccurate, whether that's what the letter says?

9       A.       As you've read it, that's what is in the letter.

10      Q.       Thank you. So if you go up to the first paragraph  
11      of that section under "Marriage Metaphor" and we talk  
12      about the marriage metaphor that he used, does this  
13      letter state "This made Ms. Strickland feel  
14      uncomfortable and intimidated having to confront the  
15      person she accused of sexually harassing her"?

16             MR. KOLSKY: Objection, I think it speaks for  
17      itself.

18             THE COURT: No, she may be asking to interpret it.  
19      Overruled. You may answer.

20      Q.       Is that an accurate statement -- I apologize.

21      A.       So why don't you ask me that again.

22      Q.       Okay.

23             So the question is, where it says "The marriage  
24      metaphor that Mr. Martinez used made Ms. Strickland feel  
25      uncomfortable and intimidated having to confront the

1 person she accused of sexually harassing her." Is that  
2 an accurate statement from this letter?

3 A. That is taken from the investigation report.

4 Q. Yes, thank you. So -- and this letter states that  
5 this conversation happened around July 5th, 2018, is  
6 that right?

7 A. That is in the letter.

8 Q. So does this letter indicate that Ms. Strickland,  
9 me, the plaintiff, had accused Mr. Davis of sexually  
10 harassing her on or about July 5th, 2018?

11 A. Well again I got this from the investigation  
12 report.

13 Q. Right, I understand, but this is what's in the  
14 letter? Is that a correct statement of what is in the  
15 letter?

16 A. Yes, it's in the letter.

17 Q. Okay, thank you. And the letter specifically  
18 states that because she had accused Mr. Davis of  
19 sexually harassing her, it was especially inappropriate  
20 for Mr. Martinez to use a marriage metaphor to describe  
21 this situation, is that accurate?

22 MR. KOLSKY: Objection, asked and answered.

23 THE COURT: It has been, but I'll allow it.

24 A. It was ill-advised.

25 Q. Okay, thank you. Let's move down to the next

1 Subparagraph E that's entitled "No Physical Touching."

2 So this section says that, um -- this is a finding  
3 about Mr. Martinez, by you, and the letter refers to  
4 Mr. Martinez, that you "had a subsequent discussion with  
5 Ms. Strickland in which you attempted to clarify whether  
6 Mr. Davis had touched Ms. Strickland or engaged in other  
7 inappropriate behavior. Ms. Strickland denied that  
8 Mr. Davis had touched her inappropriately, but she  
9 repeated that Mr. Davis made her feel uncomfortable and  
10 threatened. The investigator, being found that you had  
11 said" -- by you I mean Mr. Martinez, "'at least you  
12 weren't touched,' or words to that effect, the  
13 investigator concluded that your remarks were callous,  
14 minimizing, insensitive, and contributed to the distress  
15 that Ms. Strickland felt."

16 Is that an accurate statement from this letter?

17 A. It is, as it came from the investigation report.  
18 And again may I add that Mr. Martinez was worried that  
19 you were -- for your physical safety.

20 Q. Yes, he was. Um, thank you.

21 THE COURT: Well I've got to strike your comment,  
22 you're not testifying now. I'll strike your comment.  
23 Go ahead.

24 MS. STRICKLAND: Thank you, your Honor.

25 Q. The words "callous, minimizing, insensitive, and

1 contributed to the distress that Ms. Strickland felt,"  
2 did those words come from the investigation report?

3 A. It's my recollection it did.

4 Q. So that you drafted this letter, is that correct?

5 A. I did.

6 Q. And you used the words, "callous, minimizing,  
7 insensitive, and contributed to the distress that  
8 Ms. Strickland felt"?

9 A. I would have gotten that from the investigation  
10 report.

11 Q. Do you agree with that finding in the  
12 investigation report?

13 A. I wasn't here to agree or disagree.

14 Q. Do you agree that using words such as "at least  
15 you weren't touched," or words to that effect, are  
16 "callous, minimizing, insensitive, and contributed to  
17 the distress that Ms. Strickland felt"?

18 A. Again this came from the investigation report.

19 Q. I'm just asking you your personal opinion now, is  
20 that what you believe?

21 MR. KOLSKY: Objection, relevance.

22 THE COURT: No, overruled. You may have it.

23 MS. STRICKLAND: Your Honor, I --

24 THE COURT: You just won. He'll answer.

25 A. I think it wasn't the context in which this

1 statement was made. Like I said, Mr. Martinez was  
2 concerned about your physical safety.

3 Q. So it's your testimony today that when a  
4 supervisor tells an employee, who has complained about  
5 sexual harassment, "at least you weren't touched or  
6 words to that effect," whether that is discriminatory or  
7 not depends on the context?

8 A. I -- um, yes, I think it -- context is everything.

9 Q. So you think that there is a context where a  
10 supervisor telling a subordinate who reports sexual  
11 harassment, "at least you weren't touched," you believe  
12 that there's a context where that would be appropriate?

13 MR. KOLSKY: Your Honor, objection, this misstates  
14 the testimony.

15 THE COURT: I am going to sustain that.  
16 Sustained.

17 Q. Okay, let's move on to the next page of the  
18 letter, it is page -- it's marked as Page 4, I think  
19 it's on the bottom of Page 3 and on the top, this  
20 "approval of seeking outside advice."

21 This section says, "Ms. Strickland had also sought  
22 advice and guidance from the Fair Employment Opportunity  
23 Office at the Administrative Office of the US courts on  
24 her civil rights as an judiciary employee. The  
25 investigator found that you had called out

1 Ms. Strickland seeking legal advice from that office,  
2 which further eroded trust between you and  
3 Ms. Strickland and exacerbated the deteriorating  
4 situation in your office."

5 Is this an accurate statement from this letter?

6 A. Again that was from the investigation report.

7 Q. Do you have any reason to doubt that those  
8 statements were made?

9 A. Um, no. I mean that was what the investigator had  
10 concluded.

11 Q. Is it your position today, your testimony today,  
12 that a supervisor, a head of an office calling out a  
13 subordinate who sought guidance on her legal rights from  
14 the Fair Employment Opportunity Office, is it your  
15 testimony that that conduct is not discriminatory?

16 A. Well again I don't know -- I don't know why -- I  
17 don't know what Mr. Martinez did, I don't know what  
18 "calling out" means, so I don't know the context of what  
19 had happened. All I did was cited what the investigator  
20 had reported in her report.

21 Q. Do you think as a general matter that judiciary  
22 employees have a right to seek legal guidance and advice  
23 from the Fair Employment Opportunity Office at the  
24 Administrative Office of the US Courts?

25 THE COURT: Well isn't that settled?



1 A. So I --

2 THE COURT: Wait. Wait. Isn't that settled? I  
3 think that's going rather far afield. On my own motion,  
4 I'll sustain it.

5 MS. STRICKLAND: Thank you, your Honor.

6 Q. Moving on to Subsection D, "Shifting  
7 responsibility." "Finally the investigator noted that  
8 you," Mr. Martinez, "had said you were being blamed for  
9 matters that you had nothing to do with."

10 Do you think that it is appropriate for a  
11 supervisor of an office to react to a sexual harassment  
12 complaint by saying that he was blamed for matters which  
13 he had nothing to do with?

14 A. So -- I'm sorry, I don't quite understand your  
15 question?

16 Q. My question is, that do you think that it is  
17 appropriate for a supervisor, who is informed of a  
18 complaint of sexual harassment, to tell that employee --  
19 excuse me, that employee that the supervisor is being  
20 blamed for matters that he had nothing to do with, is  
21 that an appropriate reaction to a sexual harassment  
22 complaint? That's my question.

23 A. Yeah, I mean I can't answer that because again I'm  
24 not sure what that means, and the other reason is I've  
25 never seen -- in my experience dealing with Mr. Martinez

1 and this episode, he ever shift blame. It's quite the  
2 opposite. He was always ready to assume responsibility.

3 Q. Well isn't this an accurate statement from your  
4 letter that you delivered to Mr. Martinez?

5 A. This is taken from the investigation report and I  
6 don't -- and that's all it is. I don't -- I'm not  
7 familiar with the underlying facts behind this. And  
8 like I said, it flies in the face of my experience with  
9 Mr. Martinez.

10 Q. So you doubt findings by the investigator that --  
11 in this matter?

12 A. I didn't say that, I just said it was a -- I  
13 was -- I took this from the investigation report.

14 Q. You are a supervisor, is that right?

15 A. I am.

16 Q. If an employee came to you with a report of sexual  
17 harassment, do you think it would be appropriate to  
18 respond to that employee by saying that you felt you  
19 were being blamed for matters you had nothing to do  
20 with?

21 MR. KOLSKY: Objection, calls for speculation,  
22 relevance.

23 THE COURT: It does, we're somewhat far afield  
24 here. Sustained.

25 MS. STRICKLAND: Okay.

1 Q. Earlier you testified about, um, the wrongful  
2 conduct provision of the EDR plan and that being cited  
3 as a basis for this letter, is that correct?

4 A. That's right.

5 Q. You're not disputing that the letter cites  
6 "wrongful conduct" as the basis for the action taken  
7 here?

8 A. What I had testified to was that I had used that  
9 because that was the closest provision in Chapter 9 that  
10 talked about what would happen at the end of the  
11 investigation that there was action taken, and I also  
12 conceded that if I could go back in time I probably  
13 would have rewritten that paragraph.

14 Q. So if you go to Section 3, and this is on the last  
15 page, Chief Judge Gregory's decision.

16 A. (Turns.)

17 Q. It states, under Chapter 9 of the plan, "Employees  
18 found by the Chief Judge and/or Unit Executive to have  
19 engaged in wrongful conduct, as defined in this plan,  
20 may be subject to disciplinary action."

21 Are you disputing that the report says that?

22 A. No, I'm not disputing the report says that. But  
23 again, my explanation as the drafter of this, I'm trying  
24 to tell you why I put that in.

25 Q. Is it because there's no basis to take

1 disciplinary action if there is not a finding of  
2 wrongful conduct under the EDR plan?

3 A. Well again, this is the closest provision in  
4 Chapter 9 that I could find that would explain to  
5 Mr. Martinez why he's being counseled. And again I  
6 concede that if I could go back and do it again, I would  
7 not have fashioned it the way I did.

8 Q. Okay, let's move on. Let's see here. Okay, let's  
9 go to, um, Exhibit 18, I believe -- I believe that's the  
10 latest number where we are.

11 A. (Turns.)

12 MR. STRICKLAND: I might be having technical  
13 difficulties here.

14 (Pause.)

15 MR. STRICKLAND: I apologize. You said 18?

16 MS. STRICKLAND: 18, yeah.

17 MR. STRICKLAND: Oh, okay.

18 (On screen.)

19 MS. STRICKLAND: Okay, let's go down to Bates  
20 Number 16, I believe that's the next page.

21 (On screen.)

22 MS. STRICKLAND: Okay.

23 Q. Are you familiar with this document?

24 A. Yes.

25 Q. Is this an e-mail from you to Tony Martinez?

1 A. Yes, it looks like it.

2 Q. Is this e-mail about the investigation of me,  
3 plaintiff's report of wrongful conduct?

4 A. Um, it looks like the early stages, yes.

5 Q. Did you state in this e-mail to Tony Martinez,  
6 "Heather will need to know that you're appointing her to  
7 investigate the allegations contained in Karen's  
8 e-mail." Is that what it states?

9 A. Yeah, you're referring to the second sentence?

10 Q. Yes.

11 A. Yes.

12 Q. Did you also state, in the next sentence, "I might  
13 say that because of your earlier involvement in the  
14 matter, that you are recusing and appointing Heather as  
15 your designee to investigate the allegations"?

16 A. Yes, I said that as well.

17 Q. Did Heather Beam have any experience conducting  
18 workplace investigations before this matter?

19 A. I don't know.

20 Q. You didn't -- you didn't try to verify that before  
21 she was appointed?

22 A. So like I said, um, when this came up and this was  
23 being construed as a report of wrongful conduct under  
24 Chapter 9 -- Chapter 9 requires that an investigator be  
25 appointed and it mentions a Human Resources manager. So

1 I called the Clerk and said, "I have a task, I need an  
2 investigator who is somebody who's a Human Resources  
3 manager, preferably someone outside Mr. Martinez's  
4 office, do you have any recommendations?" And the Clerk  
5 had recommended Heather Beam.

6 Q. And my question was to verify whether Heather Beam  
7 had any experience conducting workplace investigations  
8 before this matter?

9 A. I relied on the Clerk's recommendation to me given  
10 what I told him I needed to have done.

11 Q. Once Heather Beam began the investigation, did you  
12 do anything to oversee the investigation to ensure that  
13 it was appropriately conducted?

14 A. Once Heather Beam was appointed as the  
15 investigator, I let Heather Beam conduct that  
16 investigation.

17 Q. Did you do anything to make sure that the accused  
18 parties didn't speak to each other and coordinate their  
19 testimony before the investigation?

20 A. Again I let Ms. Beam handle the investigation.

21 Q. But just to be clear, in your role as EDR  
22 coordinator, that's part of your position is to ensure  
23 that the allegations are investigated appropriately, is  
24 that right?

25 A. That's correct, which includes letting Heather

1 Beam conduct the investigation without my  
2 interference -- with my -- you know without my  
3 micromanaging her.

4 Q. Right, but you didn't ask her whether the accused  
5 parties were allowed to speak to each other, for  
6 example?

7 A. Again I let Ms. Beam handle that.

8 Q. Okay, thank you.

9 MS. STRICKLAND: Let's move up to Page 615.

10 (On screen.)

11 MS. STRICKLAND: Keep going up.

12 (On screen.)

13 Q. I think this was something that was discussed  
14 earlier. Is this part of the e-mail chain to Tony  
15 Martinez?

16 A. Um, yes, it is. The date's not correct, but it  
17 looks like it is.

18 Q. Right. Did you state in this e-mail, "I think  
19 you're doing a great job, Tony, your organizational  
20 changes are brilliant"?

21 A. Yeah, you're referring to the last line of the  
22 sentence?

23 Q. Um, yes.

24 A. Yes.

25 Q. Did you testify today that we also saw e-mails to

1 the fact of you said, "Fantastic e-mail, Tony, you're  
2 doing all you can to protect Ms. Devins"?

3 A. Yes, I said that.

4 Q. And you testified earlier that your role is  
5 supposed to be an impartial facilitator of the EDR  
6 process, is that right?

7 A. I did.

8 Q. So did you have any concern when you made these  
9 statements -- after acknowledging that Mr. Martinez was  
10 involved in the matter, did you have any concern about  
11 showing bias in favor of Mr. Martinez?

12 MR. KOLSKY: Objection, misstates the evidence  
13 after he was involved in the matter.

14 THE COURT: It does. Sustained.

15 Q. Did you --

16 MS. STRICKLAND: I apologize. May I be heard on  
17 that?

18 THE COURT: You may.

19 MS. STRICKLAND: Thank you, your Honor.

20 He stated -- we just went over that he stated that  
21 because of his earlier involvement in the matter,  
22 Mr. Ishida had suggested that he recused himself. We're  
23 in the same e-mail chain and I'm just following up on  
24 that statement.

25 THE COURT: I understand, but I adhere to my



1 ruling. The document -- the e-mail chain is before me  
2 and I will evaluate it.

3 You're about done with this witness, aren't you?

4 MS. STRICKLAND: I just have a few other things, I  
5 will move as quickly as I can.

6 THE COURT: How long do you think you're going to  
7 take? I'm not crowding you, I just am thinking about  
8 the morning recess.

9 MS. STRICKLAND: Yeah, I mean I still have a few  
10 more matters, um, probably within the next 30 minutes.

11 THE COURT: Well, all right, if it's going to go  
12 possibly 30 minutes, we'll take the morning recess at  
13 this time and we'll resume at 11:15. We'll recess.

14 THE CLERK: All rise.

15 THE COURT: Well actually I said we'd recess and  
16 the Clerk properly spoke, but before we do that, now  
17 we're off the clock here, we're into the recess time.

18 I have this issue about the plaintiff's expert  
19 witness as to whom a deposition has been taken, and I've  
20 said that I was not inclined to allow a witness, an  
21 expert witness to testify without actually appearing and  
22 being cross-examined. I wonder if we might -- and the  
23 matter has been fully briefed and I've been reviewing  
24 those briefs and considering them.

25 So I wonder if we might avoid difficulty here.

1 The defense wants to call two witnesses, one of them,  
2 um, remotely, and I've said "Well if there's agreement  
3 on that, I guess that's fine." Well that ought apply to  
4 the plaintiff as well.

5 So let me turn to the defense. You have no  
6 objection to them calling this witness remotely as  
7 you're going to call one of your witnesses, isn't that  
8 right?

9 MR. KOLSKY: Well, your Honor, I'm not sure we are  
10 going to call one of our witnesses remotely, I think  
11 there's still a scheduling issue that he's only  
12 available in the afternoon.

13 THE COURT: Then you have a problem putting him  
14 on, um, at all in the case. But put that aside.

15 Suppose they call this witness remotely? The  
16 witness has something relevant to say. No problem with  
17 --

18 MR. KOLSKY: My understanding is that the  
19 plaintiff had previously disagreed with remote  
20 testimony.

21 THE COURT: Well now the plaintiff's in a bind, so  
22 it's different. My question to you is, you don't  
23 object to that, do you?

24 MR. KOLSKY: Yes, your Honor, we do object. And  
25 we had -- we had made a proposal to plaintiff weeks ago

1 in which we would agree to, um, the submission of expert  
2 reports if it was -- if both sides could present their  
3 experts that way, and they immediately rejected that  
4 offer. And that was their chance to get their expert  
5 deposition in front of the Court --

6 THE COURT: Well just as I've said that I've  
7 allowed you to maintain your objections, maybe now that  
8 they've heard what I think, we will revisit that. And  
9 I'll turn to the plaintiffs.

10 If you can submit your expert report and they can  
11 submit their expert report, thus saving us time, um, I'm  
12 willing to do that.

13 How does that suit the plaintiff?

14 MR. STRICKLAND: Thank you, your Honor. That's  
15 actually an offer we made yesterday and the defendants  
16 rejected it.

17 THE COURT: Well now I'm supervising it. So now  
18 I'm putting it to you in open court.

19 Since you're willing, um, you're willing to submit  
20 your expert report if they're willing to submit their  
21 expert report, right?

22 MR. STRICKLAND: Your Honor, the offer that was  
23 made before by the defendants was their two expert  
24 reports for our loss-earnings's expert's deposition  
25 testimony and reports, and we're fine with that. That

1 offer still stands.

2 THE COURT: All right, wait a second, that's a  
3 little different, that's deposition and expert report  
4 for their two expert reports.

5 What does the defense say to that, that will save  
6 us all time?

7 MR. KOLSKY: We had made that proposal and the  
8 plaintiff immediately rejected it --

9 THE COURT: We're talking about today, as I said  
10 I'm presiding now. Now here's the offer. The  
11 plaintiff's deposition and expert report in return for  
12 your submitting your two expert reports. Do you go for  
13 that?

14 MR. KOLSKY: Your Honor, we do not. We think that  
15 it's important that we have an opportunity to cross-  
16 examine their expert in court, and we've spent a lot of  
17 time preparing our own expert to testify, um, and so we  
18 think we should be able to present him in court. And if  
19 plaintiff wants to present expert testimony, their  
20 expert should testify in court as well.

21 THE COURT: Well you think about it, because I'm  
22 going to ask that again at 11:15. There is sufficient  
23 grounds in the exercise of my discretion, because you've  
24 had a chance to cross-examine this expert on deposition,  
25 that, um, I see this as a way of saving time and at

1     least getting the data all before the Court. I'll ask  
2     you again at 11:15. Otherwise I'll make an order with  
3     respect to the matter.

4             All right, we'll recess until 11:15. We'll  
5     recess.

6             THE CLERK: All rise.

7             (Recess, 10:50 a.m.)

8             (Resumed, 11:20 a.m.)

9             THE COURT: And, Ms. Strickland, you may continue.

10            MS. STRICKLAND: Thank you, your Honor. Thank  
11     you, Mr. Ishida.

12            Let's pull up the lettered AJ Exhibit, please.  
13     Thank you.

14            (On screen.)

15     Q.     Mr. Ishida, is it your understanding that  
16     plaintiff, myself, filed a report of wrongful conduct  
17     and request for counseling on September 10th, 2018?

18     A.     Yes, that's correct.

19     Q.     All right. And Heather Beam conducted an  
20     investigation of that complaint as we discussed,  
21     correct?

22     A.     Yes, she conducted a unified investigation into  
23     both of your requests.

24     Q.     Okay. And Heather Beam sent you a copy of her  
25     report on January 11th, 2019?

1 A. That's right.

2 Q. Thank you.

3 So looking at the exhibit in front of you on the  
4 screen, are you familiar with this document?

5 MS. STRICKLAND: We can scroll down, if that would  
6 help.

7 (On screen.)

8 A. I think I recognize it, but if you could scroll  
9 down more, that would be helpful. (Scrolls.) Yes.

10 Q. You are familiar?

11 A. Yes. Yes.

12 MR. KOLSKY: Objection, this is beyond the scope  
13 of direct.

14 THE COURT: Well I don't know, let's see.

15 Q. This is an e-mail that --

16 THE COURT: Just a moment. AJ? Just a moment.

17 MS. STRICKLAND: AJ. This is an e-mail he was  
18 asked about on direct examination.

19 MR. KOLSKY: This e-mail was not introduced during  
20 the direct examination.

21 THE COURT: Well it may have been. But if it was,  
22 it was not beyond the scope.

23 She may have a few questions. Go ahead.

24 MS. STRICKLAND: Thank you.

25 Q. So this is an e-mail exchange between you and

1 Heather Beam?

2 A. Yes.

3 Q. And it's dated January 13th, 2019, is that right?

4 A. That's correct.

5 Q. And, um, you asked her, "Given your recommendation  
6 that Tony be counseled and trained on handling workplace  
7 conduct complaints and decision-making, I'd like your  
8 thoughts on whether you think Tony should be  
9 disqualified from participating in the EDR case," is  
10 that right?

11 A. That's correct.

12 Q. And Ms. Beam responded, "I truly believe that Tony  
13 is biased in this case involving JP and Karen as far as  
14 the sexual harassment is concerned." Is that correct?

15 A. That's correct.

16 Q. And did Ms. Beam state, "From my conversations  
17 with him, I know he feels Karen is attempting to exploit  
18 this situation to get the transfer to Asheville, however  
19 it has created a bias in him to look at this case from a  
20 neutral perspective." Is that what she told you?

21 A. Yes.

22 Q. Did she also state, "I also believe he lacks the  
23 experience and understanding of exactly how this process  
24 works." Is that right?

25 A. That's what she said.

1 Q. And did she also state, "Although retaliation in  
2 my investigation was unfounded, I still think, in a  
3 good-faith effort to resolve this, the Circuit should  
4 consider disqualifying Tony based on the contentious  
5 nature of the situation," is that right?

6 A. That's what's there.

7 Q. Did you state, um --

8 THE COURT: Let me interrupt. I guess I'm  
9 confused. I thought this was a matter of evidence. If  
10 not, you're offering it, are you?

11 MS. STRICKLAND: Yes, your Honor, we would move to  
12 admit this as an exhibit.

13 THE COURT: I thought it was in evidence. I  
14 thought it was in evidence.

15 No objection to it, is there, Mr. Kolsky?

16 MR. KOLSKY: Um --

17 THE COURT: AJ?

18 MR. KOLSKY: No objection.

19 THE COURT: It may be received, Exhibit 163 in  
20 evidence.

21 (Exhibit 163, marked.)

22 THE COURT: Go ahead, Ms. Strickland.

23 MS. STRICKLAND: Okay, thank you, your Honor.

24 Q. Did your response state in part, "I have a meeting  
25 tomorrow with Chief Judge Gregory at 2:00 p.m."?



1 A. Yes.

2 THE COURT: Well, you know, it's in evidence now.  
3 This isn't an e-mail chain I have seen before, given the  
4 motion practice here. So it's in evidence. It speaks  
5 for itself. It says what it says.

6 MS. STRICKLAND: I'll move on. Yes, your Honor.

7 Q. Did you provide Ms. Beam's January 13th, 2019  
8 e-mail to Chief Judge Gregory?

9 A. I can't remember if I provided the e-mail to him,  
10 no.

11 Q. Did you tell Chief Judge Gregory that Ms. Beam had  
12 recommended that Defendant Martinez be disqualified from  
13 the EDR proceeding?

14 A. So as I testified in my deposition, I don't  
15 recall -- I didn't recall the conversation or the  
16 meeting I had with Judge Gregory, but, um, I am -- I'm  
17 sure that I raised Ms. Beam's concerns with Chief Judge  
18 Gregory, because after I got on this e-mail, as I've  
19 testified, I raised this issue with General Counsel and  
20 got their views and guidance, which I conveyed to Chief  
21 Judge Gregory. And the reason why I'm sure I raised  
22 Heather Beam's concern is because the only time bias was  
23 mentioned was by Heather Beam. So that's why I'm sure  
24 that I raised Heather's concern with Chief Judge  
25 Gregory.

1 Q. Would you be surprised to learn that Chief Judge  
2 Gregory testified in his deposition that no one ever  
3 gave this e-mail or commuted its contents -- excuse me,  
4 communicated its contents to him that he was aware of?

5 MR. KOLSKY: Objection, relevance.

6 THE COURT: Sustained. That's just not relevant.  
7 His deposition stands for what it does. You proceed.

8 MS. STRICKLAND: Yes, your Honor. Yes, your  
9 Honor, I understand. Yes.

10 Q. So just to be clear, it's your testimony today  
11 that you do not recall whether you specifically shared  
12 this e-mail or what it stated to Chief Judge Gregory?

13 MR. KOLSKY: Objection, asked and answered.

14 THE COURT: It has been, that is his testimony,  
15 that's what I understand.

16 MS. STRICKLAND: Okay.

17 Q. Is it generally part of your duties as EDR  
18 coordinator to provide relevant information to the  
19 decision-maker in an EDR proceeding?

20 A. Yes, it is.

21 Q. Was there a pending disqualification request in  
22 front of Judge Gregory when Ms. Beam sent you this  
23 e-mail?

24 A. Yes, there was.

25 Q. Do you think it would have been important to

1     communicate this information to Chief Judge Gregory  
2     given the pending disqualification request?

3     A.     I do, and that's why I had raised the issue with  
4     General Counsel. And my recollection of the  
5     conversation was I did have a conversation with Chief  
6     Judge Gregory about the bias issue and the  
7     disqualification decision he was making.

8     Q.     So are you denying -- you were not instructed by  
9     any officials at the Administrative Office to not share  
10    this information with Chief Judge Gregory?

11    A.     I'm sorry, I don't understand what you're asking?

12    Q.     Did any officials at the Administrative Office  
13    advise or instruct you not to share this information  
14    with Chief Judge Gregory?

15    A.     So you're asking me a negative?

16    Q.     Yes, I'm asking you to -- did you receive any  
17    advice or instruction from the Administrative Office to  
18    not share this information with Chief Judge Gregory?

19    A.     No, I received no such instruction.

20    Q.     Is it your position that a Unit Executive who is  
21    accused of wrongful conduct who is found to be biased,  
22    um, can represent an employing office in an EDR  
23    proceeding, that that is an appropriate interpretation  
24    of the EDR plan?

25    A.     This goes to the advice and guidance that I

1 received from the Office of General Counsel.

2 Q. And did the Office of General Counsel advise you  
3 that a Unit Executive cannot be disqualified from the  
4 EDR matter?

5 MR. KOLSKY: Objection, privileged.

6 THE COURT: Yeah, I have to sustain the --

7 MS. STRICKLAND: Your Honor, may I be heard?

8 THE COURT: You may be heard. Yeah, you may be  
9 heard.

10 MS. STRICKLAND: Your Honor, the general -- I'm  
11 sorry, there's just a little feedback.

12 The General Counsel, Cheryl Walter, submitted a  
13 declaration in this case, it's on the public docket, in  
14 which she stated, "The defending respondent employing  
15 office, acting through its Unit Executive, is the  
16 opposing or differing party to an EDR-disputed matter.  
17 In fact to disqualify a respondent employing office from  
18 being able to respond to and defend an employment action  
19 filed under EDR would be unfair to the respondent  
20 employment office." So I just want to know whether  
21 that's what he was told?

22 THE COURT: Well I know you to do, and, um -- but  
23 she's an attorney and they've objected on the basis of  
24 attorney-client privilege. Her general statement of the  
25 law is not a waiver of the attorney-client privilege.

1           Now I will say that this is going to have to, um,  
2           take some further briefing on your part because the  
3           assertion of the attorney-client privilege is a very  
4           interesting thing.

5           Here in the District of Massachusetts, um, where  
6           assertions of that privilege are, as they are in the  
7           Western District of North Carolina, affected by the  
8           local law, the local law here in Massachusetts is that  
9           of course the courts of the Commonwealth of  
10          Massachusetts recognize the attorney-client privilege  
11          and uphold it assiduously, however they also empower a  
12          Court to draw a negative inference from it. I'm not  
13          sure what the standard is in the State of North  
14          Carolina, but I'm going to have to figure that out. But  
15          I sustain the privilege. And move on.

16        Q.     Are you aware of the Fourth Circuit's decision in  
17          this case stating that not disqualifying an accused Unit  
18          Executive created a conflict of interest?

19        A.     Am I aware of the decision?

20        Q.     Yes, are you aware of the decision?

21        A.     (Pause.) I'm not sure I am.

22        Q.     Okay. So there was some discussion about, um, in  
23          this e-mail about how Tony believed that I fabricated or  
24          exploited this complaint to get a transfer to the  
25          Asheville office. Are you aware of whether I ever

1 transferred to the Asheville office?

2 A. No, I think the last thing I recall is that, um,  
3 among your many initial demands, you had asked to be  
4 transferred to the Asheville office, and that was the  
5 only thing Mr. Martinez did not grant, because my  
6 understanding was that there was no space there. But at  
7 some point during mediation I, um, I understood that  
8 Mr. Martinez was offering his office. But whether or  
9 not you actually moved? I don't know that.

10 Q. So you're not aware of whether that transfer offer  
11 was accepted?

12 A. Um, no, all I know is the offer was made. I don't  
13 know if you had actually accepted it.

14 Q. Okay. Thank you. I believe it was your earlier  
15 testimony that plaintiff, me, was asking you for help,  
16 and the Circuit for help, seeking employment outside of  
17 the FDO during this time, isn't that right?

18 A. My recollection is you asked twice, the middle of  
19 November and the middle of January.

20 Q. Yes. So, um, I was seeking to leave the office  
21 entirely and go to a different employer, is that right?

22 A. Well you were asking for another -- a transition  
23 to another office.

24 Q. Okay, right. Thank you. And is it your  
25 understanding that me, plaintiff, resigned from the FDO

1 in March of 2019?

2 A. I wasn't aware of when you actually resigned.

3 Q. Okay, does that sound plausible to you, that it  
4 would have been in March of 2019?

5 A. I don't disagree, but I wasn't aware of it.

6 Q. Okay. And did you think that, um -- did you  
7 believe that resigning was a good outcome?

8 A. That's for you to say.

9 Q. Well you testified earlier that that's what you --  
10 what you believed. Is that your testimony?

11 MR. KOLSKY: Objection, misstates testimony.

12 THE COURT: Um, it does. On those grounds.

13 So put another question, Ms. Strickland.

14 Q. Do you believe in -- in your experience as EDR  
15 coordinator, if a complainant ultimately resigns from  
16 the employer during the EDR proceeding, do you believe  
17 that's an acceptable outcome?

18 MR. KOLSKY: Objection, calls for speculation.

19 THE COURT: I think not. Overruled.

20 A. (Pause.) Do you mind repeating the question  
21 again?

22 Q. So in your experience as EDR coordinator, do you  
23 believe that if a complainant resigns as a result of the  
24 EDR proceeding, do you believe that's an acceptable  
25 outcome?

1       A.       Well I think it depends on whatever the  
2       circumstances were. The reason why I had thought that  
3       you -- that this was an outcome that you wanted, was I  
4       had several communications with the mediator, Ed Smith,  
5       and he sent me two e-mails before your March 11th e-mail  
6       withdrawing your EDR, you know, request, I think it was  
7       March 7th and March 8th, in which he told me that --  
8       that you were excited about the clerkship opportunity  
9       with Judge Floyd and you were greatly appreciative of  
10      the Fourth Circuit's help. And so from those e-mails  
11      and reports from Mr. Smith, I deduced that this was  
12      something you were excited about, looking forward to,  
13      and that it was a good move for you.

14      Q.       At the time of those e-mail communications, had  
15      any corrective or disciplinary action been taken based  
16      on the report of wrongful conduct?

17      A.       At the time of what e-mails?

18      Q.       What you were just describing, the communications  
19      in March of 2019.

20      A.       No, no, nothing had happened by that point.

21      Q.       And just to be clear, this complaint was formally  
22      filed in September of 2018?

23              MR. KOLSKY: Objection, I guess to the term  
24      "complaint."

25      Q.       The EDR request for counseling and report of



1       wrongful conduct.

2       A.       Yeah, your two requests were filed on September  
3       2018.

4       Q.       Okay, thank you. Um, so just a moment please.  
5       (Pause.) Okay.

6               Did you have a conversation with plaintiff, me, on  
7       January 17th, 2019 about this EDR proceeding that you  
8       recall?

9       A.       Can you tell me the date again?

10      Q.       January 17th, 2019.

11      A.       Yeah, I mean I'm not -- as I'm sitting here, I'm  
12      not sure of the date.

13      Q.       Do you have any reason to doubt that there was a  
14      conversation on January 17th?

15      A.       No, I have no reason to doubt it.

16      Q.       And this was after the investigation report came  
17      about?

18      A.       January 17th?

19      Q.       Right.

20      A.       That's correct. Okay.

21      Q.       Did you tell plaintiff, me, that no decisions  
22      about disciplinary action would be made until after the  
23      Chapter 10 EDR proceeding was over?

24      A.       Again I don't recall, but I don't dispute that  
25      either.

1 Q. Okay. Did you say, "So what we could do is hold  
2 the Chapter 9 proceeding in abeyance until the Chapter  
3 10 proceeding was finished," does that sound like  
4 something you would have said?

5 A. Again I don't recall.

6 Q. Well are you disputing it, do you have a reason to  
7 deny that that was said?

8 A. I don't have a reason to affirm or deny it.

9 Q. Are you aware that this conversation was  
10 audio-recorded?

11 A. I -- I didn't -- I didn't know any of our  
12 conversations were being recorded.

13 Q. Did you become aware of that during this  
14 litigation?

15 A. I think at some point during discovery I found out  
16 about transcripts of audio recordings.

17 Q. So you are aware that defendants created a  
18 transcript of these recordings during this litigation?

19 A. I'm aware that you had audio-taped and there were  
20 transcripts made.

21 Q. Okay. Do you have any reason to doubt the  
22 accuracy of the transcripts that the defendants would  
23 have created?

24 A. Um, I have no reason to doubt that.

25 Q. Okay.

1 MS. STRICKLAND: This is Exhibit BO. Is that out?  
2 Okay.

3 (On screen.)

4 Q. Have you seen this document?

5 THE COURT: To what document --

6 MR. KOLSKY: Objection, your Honor.

7 THE COURT: Yes, to what document are you  
8 referring?

9 MS. STRICKLAND: I'm sorry, the document that's on  
10 the screen, this is Plaintiff's Lettered-Exhibit BO.

11 THE COURT: All right.

12 And, Mr. Kolsky, you object to her examining about  
13 it?

14 MR. KOLSKY: Yes, this is beyond the scope of  
15 direct. This document was not shown to the witness  
16 during his direct testimony.

17 THE COURT: It was not --

18 MS. STRICKLAND: Your Honor, the only -- I  
19 apologize. All I'm going to do --

20 THE COURT: Go ahead.

21 MS. STRICKLAND: I'm not going to ask him any  
22 questions about it, I'm just, um, asking him if he has  
23 any reason to doubt the accuracy of these transcripts.

24 THE COURT: Well it's clearly beyond the scope.  
25 The transcript is what it is. I'll sustain the

1 objection. Move on.

2 (Pause.)

3 MS. STRICKLAND: Your Honor, we'd just like to  
4 clarify whether these exhibits are admitted or not?  
5 It's our understanding that these transcripts were also  
6 sent by the defendants to the Court to aid with  
7 reviewing the recording. So maybe this can be addressed  
8 at a different time. But we'd just like to note for the  
9 record our confusion about this issue.

10 THE COURT: Well there's no confusion in the  
11 Court's mind. Something that is denominated EO is not  
12 in evidence. My understanding is that the actual  
13 recording is in evidence and I can review it. If I'm  
14 mistaken, the parties can correct me. But the  
15 transcript is not. At most the transcript is an aid,  
16 like a demonstrative aid, an aid to understanding what  
17 the actual recording says. And that's how I'm treating  
18 it.

19 Go ahead. Anything else?

20 MS. STRICKLAND: Thank you, your Honor. I'm  
21 sorry, I didn't catch that?

22 THE COURT: Anything else for this witness?

23 MS. STRICKLAND: Oh, um, yeah, but not on that  
24 issue. I will -- I will move on.

25 Let's go to, um, Exhibit 6, Admitted Exhibit 6.

1 (On screen.)

2 MS. STRICKLAND: Thank you.

3 Q. Are you familiar with this document?

4 A. (Silence.)

5 MS. STRICKLAND: We can scroll down, if that would  
6 help.

7 MR. KOLSKY: Objection, beyond the scope of the  
8 direct. This witness was not asked about this document  
9 during his direct testimony.

10 MS. STRICKLAND: This document is relevant to his  
11 testimony about whether disciplinary action was taken or  
12 not or the, um, definitions that were used.

13 THE COURT: And how is it relevant?

14 MR. KOLSKY: Your Honor --

15 THE COURT: Wait a minute, I'm asking this  
16 question of --

17 Go ahead, Ms. Strickland.

18 MS. STRICKLAND: Oh, thank you, your Honor.

19 It's relevant because it says, um, "The  
20 investigation report recommends that disciplinary action  
21 be taken against the accused employee as well as the  
22 Unit Executive." So it's relevant to his credibility.  
23 It's also relevant to the constructive discharge issue  
24 because it contains discussion of the circumstances of  
25 the resignation.

1 THE COURT: Mr. Kolsky?

2 MR. KOLSKY: Your Honor, may I respond?

3 THE COURT: You may.

4 MR. KOLSKY: Ms. Strickland had an opportunity to  
5 call witnesses in this case. She chose not to. She  
6 could have called Mr. Ishida and asked him about this  
7 document. She chose not to. She shouldn't be permitted  
8 to examine him about a new document during cross-  
9 examination.

10 THE COURT: I think this is in -- within, as she  
11 explains it, within the scope of your examination,  
12 however, and in my discretion I'm going to allow it and  
13 she may examine concerning it.

14 MS. STRICKLAND: Your Honor, I won't belabor the  
15 point, but let's go back to the summary section on the  
16 first page.

17 THE COURT: This document is not --

18 MS. STRICKLAND: All right.

19 THE COURT: Is this in evidence? Correct me.

20 MS. STRICKLAND: I believe so. This is admitted  
21 as Exhibit 6.

22 THE COURT: Thank you. Go ahead. You may examine  
23 concerning this.

24 Q. Does it state in the fourth paragraph, the second  
25 sentence, "Eventually Mr. Smith was able to persuade

1 Circuit Judge Henry Floyd to offer Ms. Strickland a  
2 clerkship, till the end of the term in June, and  
3 convince Ms. Strickland to withdraw her EDR complaint in  
4 return for the clerkship."

5 Is that what it states?

6 A. I think it does state that, yes.

7 Q. Okay.

8 (Pause.)

9 MS. STRICKLAND: I'm sorry, may I proceed?

10 THE COURT: You may.

11 MS. STRICKLAND: Okay, thank you.

12 Now let's go to Section 2.

13 (On screen.)

14 Q. Does this document state, "The last remaining  
15 matter is Ms. Strickland's report of wrong" -- I assume  
16 that means "wrongful conduct under Chapter 9 of the EDR  
17 plan." Is that what it states?

18 A. (Reads.) That's what it states, yes.

19 Q. Does this document confirm that you waited to  
20 address the disciplinary proceeding until after I  
21 resigned and accepted a clerkship?

22 A. (Pause.) Say that again?

23 Q. Does this document confirm that you waited to  
24 address the disciplinary proceeding until after I  
25 resigned and accepted a clerkship?

1 A. I don't know if it reflects an intention to wait,  
2 but the timing looks like it happened afterwards, yes.

3 Q. Okay. Turning to next page, does this document  
4 state, "The investigation report recommends that  
5 disciplinary action be taken against the accused  
6 employee, Federal Public Defender First Assistant JP  
7 Davis, as well as the Unit Executive, Anthony Martinez.  
8 We cannot decide any disciplinary action against  
9 Mr. Davis, that is within the authority of the Unit  
10 Executive. But we can and have in deciding if  
11 disciplinary action is appropriate for Mr. Martinez."

12 Is that what it states?

13 A. That's what it states, yes.

14 Q. Did you state in this letter that pursuant to  
15 Chapter 9 of the EDR plan, "Employees found that a Chief  
16 Judge and/or a Unit Executive to have engaged in  
17 wrongful conduct, as defined in this plan, may be  
18 subject to disciplinary action"?

19 A. I'm sorry, say that again?

20 Q. The statement that I just read, is that in this  
21 memorandum?

22 A. Yes, the statement you read is there.

23 Q. Okay. So going to Footnote 1, it states,  
24 "Wrongful conduct is defined to include discrimination  
25 against employees based on race, color, religion, sex,



1 including pregnancy and sexual harassment, national  
2 origin, age" -- and skip ahead, "Harassment against an  
3 employee based on any of these protected categories, or  
4 retaliation for engaging in any protected activity, is  
5 prohibited."

6 Is that what it states?

7 A. That's what it states, yes.

8 Q. Okay. So does this letter confirm that  
9 Mr. Martinez was allowed to make the decision about  
10 whether to discipline JP Davis?

11 A. This memorandum says that I don't know if the  
12 Circuit has the authority to discipline JP Davis.

13 Q. So Mr. Martinez was allowed to make the decision  
14 about whether to discipline JP Davis?

15 A. It was in his, um, within his authority and  
16 purview as the Unit Executive, to do that, yes.

17 Q. Even though he also received a -- whether you call  
18 it a "reprimand" or a "letter of counseling," there was  
19 action taken against him based on the same  
20 investigation?

21 A. I don't understand your question?

22 Q. So the letter of counseling that we discussed  
23 earlier, that arose from the same investigation, is that  
24 right?

25 A. Yes, the letter of counseling was based on the

1 investigation report.

2 Q. And Mr. Martinez, even though he was counseled,  
3 disciplined, whatever you want to call it, he also made  
4 the decision about whether to discipline JP Davis, is  
5 that right?

6 A. Because the Circuit did not have the authority to  
7 discipline a subordinate in that office.

8 Q. Do you have a source of authority for that?

9 A. Well I -- that is -- that is something that was  
10 discussed, you know, frequently, and our view is I don't  
11 know of an authority that gives the Circuit the  
12 authority to discipline a subordinate in a Unit  
13 Executive's office.

14 Q. Does Chapter 9 of the plan say that?

15 A. You're talking about something -- you're talking  
16 about a disciplinary action outside of Chapter 9.  
17 You're talking about the authority of the Court of  
18 Appeals to discipline a subordinate in an office.

19 Q. Does Chapter 9 of the plan state "Employees found  
20 by the Chief Judge and/or Unit Executive to have engaged  
21 in wrongful conduct, as defined in this plan, may be  
22 subject to disciplinary action"?

23 A. Well I think you read the operative language, "the  
24 judge and/or the Unit Executive."

25 Q. Does Chapter 9 in the plan state that the Chief

1 Judge and/or the Unit Executive, that one or the other,  
2 has particular authority?

3 A. Well I think -- I think the authority to  
4 discipline a subordinate in an office rests with the  
5 Unit Executive, which is what Chapter 9 says. So I  
6 think the two are consistent.

7 Q. Do you think that it's an conflict of interest for  
8 somebody who was disciplined in a matter to make a  
9 decision about disciplinary action regarding another  
10 employee?

11 MR. KOLSKY: Objection, relevance.

12 THE COURT: Sustained.

13 MR. KOLSKY: This is not relevant as applied.

14 THE COURT: It is not relevant as applied. She'll  
15 move on.

16 MS. STRICKLAND: Yes, your Honor, I'll move on.

17 Q. Are you aware that Mr. Davis told another  
18 supervisor that plaintiff, me, may just "need to get  
19 smacked a bunch"?

20 A. I'm sorry, I didn't understand the last part.

21 Q. Are you aware that Mr. Davis told another  
22 supervisor that plaintiff, me, "may just need to get  
23 smacked a bunch"?

24 MR. KOLSKY: Objection, relevance.

25 THE COURT: Sustained. Well not on that ground,

1       that's clearly beyond --

2               MS. STRICKLAND:   Your Honor --

3               THE COURT:   Wait a minute.   I think that's beyond  
4       the scope.   I mean you did have a chance to put on this  
5       witness and other witnesses.   Sustained.

6               Move on.

7               MS. STRICKLAND:   Thank you, your Honor.

8       Q.       You testified earlier that you believed that Tony  
9       acted in good faith, um, throughout the investigation,  
10      is that right?

11      A.       Yes.

12      Q.       Do you, sitting here today, do you believe that  
13      Tony acted in good faith as a Federal Public Defender?

14      A.       In my dealings with him and in my interactions, he  
15      acted in good faith.   And it's also, may I add,  
16      something the investigator found as well.

17      Q.       Are you aware of other EDR complaints filed  
18      against Tony in his office?

19              MR. KOLSKY:   Objection, relevance, and outside the  
20      scope of direct.

21              THE COURT:   It is outside the scope.   Sustained.

22              MS. STRICKLAND:   Your Honor, may I be heard?

23              THE COURT:   You may.

24              MS. STRICKLAND:   Thank you, your Honor.

25              We'd just like to at least put it on the record

1     that we believe it's relevant, if he's saying he  
2     believes that Tony acted in good faith and in a  
3     nondiscriminatory matter, the fact that he was aware of  
4     other EDR complaints, a pattern of complaints from that  
5     office.

6             THE COURT: I understand that's your proffer. I  
7     didn't rule as to whether it was relevant or not, I  
8     ruled that it's beyond the scope of the examination of  
9     this witness.

10            Now what Mr. Kolsky said is correct, you rested on  
11     a documents-only case. They called a live witness, um,  
12     and I grant you the witness is one of the defendants,  
13     and they examined him. You have the right to examine  
14     him on all those matters as to which they examined plus  
15     you have the right to examine him on the question of any  
16     issues of bias or motive related to his testimony. But  
17     beyond that, um -- and his credibility. But beyond  
18     that, um, you don't. And this is beyond the scope.  
19     Sustained.

20            (Pause.)

21            MS. STRICKLAND: I apologize, your Honor, we're  
22     just -- because there have been so many changes in the  
23     exhibit list, we just want to make sure that things get  
24     admitted.

25     Q.     Okay. Did you testify in a deposition in this

1 matter?

2 A. I did, yes.

3 Q. Okay. Did you review and sign the transcript for  
4 your deposition?

5 A. Yes, I did.

6 Q. So let's take a look at -- this is Lettered  
7 Exhibit S.

8 Does this appear to be a true and accurate copy of  
9 your deposition transcript?

10 MR. KOLSKY: Objection, this is outside the scope  
11 of direct.

12 THE COURT: It appears to be. sustained on the  
13 same ground.

14 MS. STRICKLAND: Okay, thank you, your Honor. I  
15 think we're just a little confused. They have objected  
16 to -- we have moved to admit our trial exhibits. They  
17 have objected to some of our exhibits on various  
18 grounds. This deposition transcript, for example, it's  
19 our understanding that they don't actually object to us  
20 using the deposition, so we're a little confused as to  
21 why, um, some of our exhibits are not admitted into  
22 evidence, and we would appreciate a chance to make  
23 arguments as to other exhibits, why we believe their  
24 objections are invalid. But I understand if your  
25 Honor's ruling is that that's outside the scope of this

1 matter.

2 THE COURT: Well that is my ruling and we'll  
3 address that at an appropriate time.

4 All right. Is that it for this witness?

5 (Pause.)

6 MS. STRICKLAND: Um, I believe so. If I could  
7 just have one moment please to review my notes?

8 THE COURT: Of course, you may.

9 MS. STRICKLAND: Thank you.

10 (Pause.)

11 MS. STRICKLAND: That's all I have. Thank you,  
12 your Honor.

13 THE COURT: Any redirect, Mr. Kolsky?

14 MR. KOLSKY: Just a few questions, your Honor.  
15 Thank you.

16 THE COURT: Very well. Thank you.

17 I neglected, when I came back on the bench, to see  
18 whether we've reached agreement as to the, um,  
19 deposition and expert report of the plaintiff's expert  
20 and the expert reports of the defendants's experts.  
21 Have we, Mr. Kolsky?

22 MR. KOLSKY: Your Honor, I'm sorry, I did say I  
23 had a few questions for redirect.

24 THE COURT: Oh, I misheard you. We'll take those  
25 questions and then I'll put my question to you. You go

1 right ahead.

2

3 REDIRECT EXAMINATION BY MR. KOLSKY:

4 Q. Mr. Ishida, would you please take out Exhibit 7,  
5 which is the letter of counseling.

6 A. (Turns.) Yes.

7 Q. So this letter on Page 2 refers to, um,  
8 Mr. Martinez's use of the marriage metaphor, correct?

9 A. That's correct, yes.

10 Q. Okay. Do you consider that to have been an act of  
11 discrimination by Mr. Martinez?

12 A. No.

13 Q. And then below that it refers to -- there's a  
14 section titled "No Physical Touching," um, and it refers  
15 to a remark by Mr. Martinez. Do you consider that to  
16 have been an act of discrimination?

17 A. No.

18 Q. And, um, in that section it says "At least you  
19 weren't touched," or words to that effect. Why does the  
20 letter say "or words to that effect"?

21 A. Well I think it, um -- again I took this from the  
22 investigator's report and I think the investigator used  
23 that, because I don't know if these were the exact words  
24 that were used.

25 Q. You don't know the exact words Mr. Martinez used,



1 is that right?

2 A. Right, which is why I used "words to that effect."

3 Q. Moving on to the next page in the section entitled  
4 "Disapproval of Seeking Outside Advice."

5 A. Yes.

6 Q. Do you consider that to have been an act of  
7 discrimination by Mr. Martinez?

8 A. No.

9 Q. And then below that there's a section titled  
10 "Shifting Responsibility." Do you consider that to have  
11 been an act of discrimination by Mr. Martinez?

12 A. No.

13 Q. Moving on to the next page, the last page in the  
14 document, um, your letter cites the wrongful conduct  
15 standard under Chapter 9 of the plan, correct?

16 A. That's correct.

17 Q. Does Ms. Strickland have any rights under Chapter  
18 9?

19 A. No.

20 Q. You were asked about Exhibit 18, which is the  
21 e-mails where you say "You're doing a great job," or  
22 similar words. Do you recall those e-mails?

23 A. Yes, the, um -- what was the date again?

24 Q. That was going to be my question for you. Could  
25 you, um -- could you see if you can pull that document

1 up in front of you.

2 A. (Turns.)

3 MR. KOLSKY: Mr. Spears, could you bring up  
4 Defendants's DG, which is now Trial Exhibit 18.

5 (On screen.)

6 Q. Mr. Ishida, the document is now displayed on the  
7 screen, um, and it says, "I think you're doing a great  
8 job, Tony," is that right?

9 A. Um, yes.

10 Q. So what was the -- what is the date that appears  
11 on this, um, on this e-mail?

12 A. This is -- well the top of the e-mail is dated  
13 June 12th, 2019, but I don't think that's correct.

14 Q. Do you know why it has the June 12th, 2019 date?

15 A. Well I think -- my understanding was that when we  
16 -- we, the Court, turned over these documents, there was  
17 some tracking error because at the time we were moving  
18 e-mail servers, and so I think some of the e-mails that  
19 we turned over had been misdated. And so that's why --  
20 I don't think this is the correct date because if you  
21 look down at the previous message in that e-mail string,  
22 it's dated August 14th, 2018. So I don't think the June  
23 12th, 2019 date is correct.

24 Q. Do you recall approximately when you sent that  
25 e-mail to Mr. Martinez?

1 A. It would have been around August 14th, 2018.

2 Q. At that time had Ms. Strickland made any  
3 allegations of retaliation, discrimination, or any other  
4 wrongful conduct against Tony Martinez, as far as you're  
5 aware?

6 A. No, the first time I became aware of the  
7 plaintiff's allegations against Mr. Martinez was on  
8 September 10th, 2018 when she filed her Chapter 9 and 10  
9 requests.

10 Q. You were also asked about Exhibit 6, your  
11 memorandum to the Chief Judge.

12 Why did that memorandum include the wrongful  
13 conduct standard from Chapter 9?

14 A. Well again this was -- this was -- I wasn't  
15 intending to imply that there was wrongful conduct, I  
16 wasn't intending to imply that discipline was necessary,  
17 I just tried to give Chief Judge Gregory kind of the  
18 overall scope, "This is what the universe looked like"  
19 and "This is how Chapter 9 functions," and "These are  
20 decisions that he needed to maintain in the Chapter 9,"  
21 um -- "the Chapter 9" -- excuse me, "the Chapter 9  
22 matter."

23 THE COURT: I'm sorry, I didn't hear you clearly?

24 THE WITNESS: My apologies, Judge.

25 What I was saying was that, um -- what I was

1     trying to lay out for Judge Gregory was how the whole  
2     process worked, decisions that he needed to make, and  
3     the Chapter 9 matter.

4             THE COURT:   Thank you.

5             MR. KOLSKY:   No further questions.

6             THE COURT:   Ms. Strickland, anything further for  
7     this witness?

8             MS. STRICKLAND:  Yeah, just very briefly, your  
9     Honor.

10

11     RE CROSS-EXAMINATION BY MS. STRICKLAND:

12     Q.     When you say -- Mr. Kolsky asked you about various  
13     findings in the letter and you said that you believed  
14     they are not examples of discriminatory conduct.  Are  
15     you basing that on Title VII standards or any sort of  
16     objective standard for evaluating misconduct?

17     A.     No, I'm saying that they were not, um, you know  
18     protected -- they did not implicate a protected class.  
19     I think there were -- if you look at the context, there  
20     were other reasons why, um, Mr. Martinez had said those  
21     things.

22     Q.     Is that your personal opinion or is that based on  
23     an objective legal standard?

24     A.     Well this is -- this is what's based on my  
25     understanding as is borne by the investigation report.

1 MS. STRICKLAND: Let's pull up Trial Exhibit 18.

2 (On screen.)

3 Q. Okay. So Mr. Kolsky asked you, when you sent this  
4 e-mail on August 14th, regarding -- requesting Heather  
5 Beam, whether you were aware of allegations of  
6 Mr. Martinez's involvement in the situation at the time  
7 you sent the e-mail, is that correct?

8 MR. KOLSKY: Objection, misstates the question.

9 THE COURT: It does.

10 Put another question.

11 MS. STRICKLAND: Okay.

12 Let's scroll down to Bates 2861, it's the second  
13 page.

14 A. I'm not seeing anything on my screen.

15 Q. Oh, sorry. (Pause.) So -- yeah, it is right  
16 here.

17 MS. STRICKLAND: Yeah, so just go ahead and scroll  
18 it.

19 (Scrolls.)

20 Q. Okay. So is this the e-mail where you talk about  
21 Mr. Martinez's earlier involvement in the matter?

22 A. Um --

23 Q. In that first paragraph did you say --

24 A. If you can scroll up and let me look at the date  
25 so I can kind of orient myself. (Looks.) Okay.

1 Q. So did you say in this e-mail "I might say that  
2 because of your earlier involvement in the matter, that  
3 you are recusing and appointing Heather as your designee  
4 to investigate the allegations"?

5 A. Okay, yes.

6 Q. And then your -- your e-mail --

7 MS. STRICKLAND: If you could just scroll up to  
8 the top.

9 (Scrolls.)

10 Q. When you said, "I think you're doing a great job,  
11 Tony, your organizational changes are brilliant," was  
12 that after you sent the prior e-mail I just read?

13 A. (Looks.) Um, yeah, I think the way it's sequenced  
14 in this document, I would say it was after.

15 Q. Thank you.

16 MS. STRICKLAND: That's all I have.

17 THE COURT: Nothing more for this witness?

18 (Pause.)

19 MR. KOLSKY: No further questions from the  
20 government.

21 THE COURT: All right, you may step down,  
22 Mr. Ishida. Thank you.

23 (Steps down.)

24 THE COURT: And, Mr. Kolsky, what about this  
25 admitting expert reports?

1 MR. KOLSKY: With your Honor's permission,  
2 Ms. Young will address that.

3 THE COURT: I'll hear you, Ms. Young.

4 MS. YOUNG: Your Honor, we think the Court will  
5 benefit from the live testimony of our expert, who's  
6 already on his way here and traveling here today. The  
7 deposition testimony and declarations of plaintiff's  
8 expert is hearsay, and we object, but we'd be okay with  
9 him appearing by video.

10 THE COURT: Your rights are saved. Well, no,  
11 that's a good point.

12 What do you say, um, they now are amenable to your  
13 expert appearing by video? Um, either one of you, who  
14 is going to address that? Is that all right?

15 MR. STRICKLAND: We wouldn't have the time to  
16 schedule it now, and as we've stated by our filing, we  
17 have lost our litigation grant because of the withdrawal  
18 of counsel. So we don't have the funds to pay for him  
19 even to appear by video.

20 THE COURT: The Court is admitting the deposition,  
21 in view of the absence of the witness, um, but no ruling  
22 by this Court prevents you from putting on -- the  
23 defense I'm speaking to now, putting on your experts  
24 live. Indeed not. Of course you may do that.

25 All right. Call your next witness.

1 MS. YOUNG: Thank you, your Honor, just one moment  
2 while we search for the witness.

3 (Pause.)

4 MS. YOUNG: Your Honor, we call Anthony Martinez.

5 THE COURT: He may be called.

6 (ANTHONY MARTINEZ, sworn.)

7 (Interruption by Court Reporter.)

8 THE COURT: Yes, I was going to ask the same  
9 question.

10 It's hard to identify voices. Who is going to  
11 examine this witness?

12 MS. YOUNG: I will be, your Honor, Danielle Young  
13 for the defense.

14 THE COURT: Thank you, Ms. Young.

15

16 \*\*\*\*\*

17 ANTHONY MARTINEZ

18 \*\*\*\*\*

19

20 DIRECT EXAMINATION BY MS. YOUNG:

21 Q. Mr. Martinez, let's begin by having you introduce  
22 yourself and telling us about your educational  
23 background.

24 A. My name is Anthony Martinez. I graduated from  
25 Rutgers University with a Bachelor's degree in 1976 and



1 I graduated from Siena Law School in 1981.

2 Q. And can you tell us about your work experience  
3 after law school?

4 A. After law school I clerked for a, um, a criminal  
5 judge, a Superior Court judge In New Jersey for a year.  
6 After I left that position, I was an Assistant  
7 Prosecutor in a county prosecutor's office for two  
8 years. After that I was in a solo practice where I did  
9 exclusive criminal defense in Jersey City, New Jersey,  
10 for three years. Then in March of 1987, I was hired as  
11 an Assistant Federal Public Defender in the Middle  
12 District of Florida out of the Tampa division, I worked  
13 there from 1987 to 2000. In 2000, I was hired as an  
14 Assistant Federal Public Defender in the Eastern  
15 District of Tennessee, and then within a year I became a  
16 First Assistant. And so I was a First Assistant in the  
17 Eastern District of Tennessee for approximately 15  
18 years. And after that I then joined the Federal Public  
19 Defender's Office in the Western District of North  
20 Carolina in 2017, and I was there for approximately 4  
21 1/2 years, 5 years.

22 Q. And what are you doing now, Mr. Martinez?

23 A. I'm retired and spending some good time, quality  
24 time with my grandchildren.

25 Q. Let's turn now to what you did before you retired.

1     What led to you being hired as the Federal Defender for  
2     the Western District of North Carolina?

3     A.     I was working as the First Assistant in the  
4     Eastern District of Tennessee, in Chattanooga, um, and a  
5     co-worker, my former co-worker, um, then working in the  
6     Chattanooga office with me, her name is Mary Ann  
7     Lacogan, she was working in the Asheville division here,  
8     and she advised me that there was an opening in the  
9     Federal Defender's Office here in the Western District  
10    of North Carolina, and that she thought I would be a  
11    good fit, um, only because I had worked in an FDO when I  
12    was in Tampa. I worked at an FDO, a Federal Defender  
13    organization, for 14 years, and then I worked in a  
14    community-defender organization for 16 years in  
15    Tennessee. And this is --

16    Q.     What changes did you make to the office when you  
17    came on-board?

18    A.     When I came on-board I looked at the  
19    organizational structure, that was the first thing we  
20    did, and what I observed is that there was no structure  
21    basically. And I always came from -- when I worked in  
22    Tampa and I worked in Tennessee I came from, you know, a  
23    heavy-litigation-type office for sure and a quasi-  
24    team-related or oriented structure, a trial-team  
25    structure. So the first thing I did was effectuate a

1 trial-team structure. So I split the office up into  
2 trial teams, an appellate unit, and a trip team, and an  
3 administrative unit team.

4 Q. What was your leadership --

5 THE COURT: How many -- excuse me. How many  
6 attorneys, including yourself, were in that office  
7 during your tenure, sir?

8 THE WITNESS: In the Charlotte office or in the  
9 entire office, sir?

10 THE COURT: The entire office, and where they were  
11 located.

12 THE WITNESS: Okay, I'm trying to recollect now,  
13 it's been 5 years.

14 At that time I had 40 FTEs, 40 full-time  
15 employees, I want to say approximately half of them were  
16 attorneys, um, approximately. And if the math works  
17 out, there were about 9 trial-team attorneys in  
18 Charlotte. There were two R&Ws, and that's 11 in  
19 Charlotte. Then we had an appellate unit that had 3 or  
20 4, um, in Charlotte. So that's 14, 15. And then I had  
21 about 4 attorneys in Asheville. So that's approximately  
22 what the split-up was.

23 THE COURT: Thank you.

24 Go ahead, Ms. Young.

25 MS. YOUNG: Thank you, your Honor.

1 Q. What was your leadership style as the Federal  
2 Defender, Mr. Martinez?

3 A. My leadership style, I call it "servant  
4 leadership," and what I mean by "servant leadership" is  
5 I always want to lead by example. And so, um, if  
6 there's any issue that came up that people could not  
7 handle, any -- because I thought in my career, having  
8 done this -- by this time I had 32 years experience, I  
9 had experience defending all kinds of different  
10 defendants, criminal defendants in federal court, and so  
11 I would take on the task and take the responsibility and  
12 do what I expected other attorneys and other people  
13 would do in the case. And so that was my style.

14 Q. And were you involved in Ms. Strickland's hiring?

15 A. I was not directly involved. I was still in the  
16 Chattanooga division in the Eastern District of  
17 Tennessee, I had already accepted an offer to be the  
18 Defender, um, with the Fourth Circuit, but I was  
19 awaiting my background clearance, and so what I did was  
20 -- Ros Richardson, who was the Defender at that time,  
21 um, wanted me to participate, listen to the interview,  
22 and so I skyped into Ms. Strickland's interview from  
23 Chattanooga. So that was my participation and role.

24 Q. And were you involved in the decision of whether  
25 or not to hire Ms. Strickland?

1       A.       I was involved to the extent that Ros Richardson  
2 spoke to me and said, "Mr. Martinez, I'm inclined to  
3 hire Ms. Strickland, do you have any objection?" And I  
4 said "No, I have no objection, she appears to be  
5 well-qualified for the position." And she said, "Okay,  
6 fine. Thank you." And that was the extent of it.

7       Q.       How did Ms. Strickland's qualifications compare to  
8 other Research and Writing attorneys at the Federal  
9 Defender's Office?

10      A.       Well there were only two in Charlotte, two  
11 Research and Writing Specialists. Um, Caleb Newman, he  
12 had limited experience, I would say somewhat similar to  
13 Ms. Strickland. And then Jared Martin had much more  
14 extensive experience, I think he worked for the Indiana  
15 Community Defender for about 8 or 9 years.

16      Q.       And when Ms. Strickland was hired, what did you  
17 know about her expectation that she would transition to  
18 a AFPD role from a Research and Writing role?

19      A.       When she was hired, I had no knowledge of her  
20 expectations, I did not participate in that discussion  
21 that she had with Ms. Richardson. Ms. Richardson did  
22 not consult with me about any expectations. I had  
23 absolutely no knowledge of her -- of Ms. Strickland's  
24 expectations.

25               MS. YOUNG: Mr. Spears, can you please show

1 Exhibit FI to the witness.

2 (On screen.)

3 Q. Do you recognize this document, Mr. Martinez?

4 A. (Looks.) Yes, ma'am.

5 Q. And what is it?

6 A. It's an e-mail that I received from Caryn Devens  
7 to myself, um, copied "JP Davis," and the subject matter  
8 was "Job Transition," dated December 5th, 2017.

9 MS. YOUNG: Your Honor, the defendants move to  
10 introduce FI into evidence.

11 THE COURT: Any objection?

12 MS. STRICKLAND: No, your Honor.

13 THE COURT: FI is admitted, Exhibit 164.

14 (Exhibit 164, marked.)

15 Q. Mr. Martinez, do you recall meeting with  
16 Ms. Strickland, after she sent you this e-mail, to  
17 discuss her transition to the Assistant Federal Defender  
18 role?

19 A. I don't recall any -- this specific meeting. My  
20 only recollection is that I did meet with her on at  
21 least two or three different occasions, and we discussed  
22 -- in particular I was interested in finding out which  
23 track she would take within our office. And when I --

24 Q. All right. And at those meetings, Mr. Martinez,  
25 what did you discuss about a timeline for promoting

1 Ms. Strickland to an AFPD role?

2 A. I didn't discuss any timeline with her in terms of  
3 when she would become an AFPD.

4 Q. And why not?

5 A. Because my philosophy is I would never give an R &  
6 W a timeline to an AFPD, because there are too many  
7 factors that go into considering whether a person is  
8 prepared to be an AFPD, um, at that time. Because first  
9 I would want to find out, you know, how does she handle  
10 -- or anyone handle clients? How do they relate to  
11 clients? How do they relate to other members of the  
12 team? How do they relate to judges? What are their  
13 research skills? What are their writing skills? What  
14 are their oral skills? Going to visit clients? Going  
15 to FBI? DEA? So there's many factors that go into --  
16 and around this time, um, that would go into considering  
17 whether I would promote somebody to an APD. I would not  
18 give a 2-month or 3-month timeline because I would not  
19 know whether this person is ready to be an APD.

20 Q. Thank you.

21 MS. YOUNG: Mr. Spears, can you please take down  
22 what has now been identified as Exhibit 163.

23 (Off screen.)

24 Q. Who decided that Mr. Davis would be  
25 Ms. Strickland's mentor?

1 A. I did.

2 Q. And how did you decide that Mr. Davis would be  
3 Ms. Strickland's mentor?

4 A. Well, both Ms. Strickland and myself started  
5 around the same time and so when I came on board I  
6 realized she lacked a lot of experience. I mean she had  
7 no experience whatsoever in practicing in a Federal  
8 Public Defender's office where she'd been handling cases  
9 in federal court. And so I wanted to make sure that  
10 there was somebody that could just walk her through the  
11 ropes, from A through Z, on how to file a motion, when  
12 to file a motion, how to go to a jail to speak to her  
13 client, guideline sentencing, um, and all the statutes.  
14 And so I thought that Mr. Davis would be the perfect  
15 person basically because Mr. Davis -- we were talking on  
16 a regular basis, every single day, and his office was  
17 physically right next to mine. And based on his level  
18 of experience, I thought he would be a good person. I  
19 didn't need anyone -- necessarily anyone that had a lot  
20 of experience, I just needed someone who would be able  
21 to explain the basics of federal practice in federal  
22 court, and in my eyes Mr. Davis was the perfect person.

23 Q. Mr. Martinez, what do you recall about meeting  
24 with Ms. Strickland on June 6th, 2018?

25 A. I met with Ms. Strickland, the purpose of the



1 meeting was to discuss what was happening on the **Dixon**  
2 trial, which was a case that we had in our office, um,  
3 that we inherited when I came in, um, and it involved a  
4 very serious offense, the client was very difficult to  
5 deal with, and it involved him facing, if he was  
6 convicted, life mandatory without any possibility of  
7 parole in federal prison. We had a meeting and I asked  
8 -- there were concerns about what the first, um, chair  
9 was doing or not doing on the case, so I asked Ms. Holly  
10 Dixon, our legal Assistant, to take notes, um, and then  
11 we sat down -- and because Ms. Strickland at that time  
12 was working very hard, was working -- and I really  
13 appreciated all the work she was doing, she was the  
14 Research and Writing Specialist on the case, she was  
15 researching a lot of issues, there were a lot of motions  
16 that needed to be filed. And so I was just asking, um  
17 -- the purpose the meeting was "Hey, what's going on  
18 with this case?"

19 Q. What if anything did Ms. Strickland mention to you  
20 about how that case was affecting her other work?

21 A. One of the first words she started talking, saying  
22 was that this case is causing -- "My working on this  
23 case is causing tension with other cases that I have,  
24 because I just now had to cancel a meeting that  
25 Mr. Davis has scheduled for me to shadow to meet with a

1 client and review a PSR," a Presentence Investigation  
2 Report, um, "but I had a conflict because I scheduled a  
3 discovery review meeting with the FBI on this case. And  
4 so, um, I was surprised on how disturbed Mr. Davis was,  
5 on his reaction -- I was shocked by his reaction, and I  
6 thought that the shadowing events were optional and not  
7 mandatory."

8 Q. Mr. Martinez, you just testified "I was shocked  
9 and disturbed." Are you referring to yourself?

10 A. No, no, this is what Ms. Strickland -- I'm sorry,  
11 I was -- this is what Ms. Strickland was conveying to me  
12 on how she was shocked at Mr. Davis's reaction on being  
13 disturbed, that she assumed that these meetings, these  
14 shadow meeting were optional and not mandatory. Thank  
15 you.

16 Q. Thank you. And what was your impression of the  
17 nature of the disagreement between Ms. Strickland and  
18 Mr. Davis at that time?

19 A. The nature of it was basically, in my mind, a  
20 breakdown in communication.

21 Q. And what if anything did Ms. Strickland say to you  
22 about that meeting, about how Mr. Davis was  
23 communicating to her?

24 A. She just -- the words she used was "He was  
25 disturbed."

1 Q. And how did things resolve after that meeting  
2 during the month of June, are you aware of any other  
3 issues between Mr. Davis and Ms. Strickland?

4 A. I don't recall any other issues, No, ma'am.

5 Q. Did Ms. Strickland ever serve as second chair on  
6 the **Dixon** case?

7 A. Yes, she did.

8 Q. And how did Ms. Strickland come to be assigned  
9 second chair on the **Dixon** case?

10 A. I don't recall the date, off the top of my head,  
11 but I know I was on my way to a training out of the  
12 office, I was on my way to Kansas City, I had to grab a  
13 flight that evening from Charlotte, and I think it was  
14 like 5:00 or 5:30 when she approached me and advised me  
15 -- and asked to volunteer. She said, "Hey, Tony, I'm  
16 interested in second-chairing the trial, the **Dixon**  
17 trial, do you have any objection to me being second  
18 chair?" And I said "No." And I literally walked out  
19 and took my flight.

20 Q. Why did you later get involved in rearranging who  
21 was handling the **Dixon** matter?

22 A. Well eventually, um, the trial of that matter was  
23 scheduled for a date-certain within a two- or three-week  
24 period of time. The trial had already been continued on  
25 at least 2 or 3 occasions, so there were three

1     continuances. The lead counsel in that case was leaving  
2     the office. The client -- again there were very serious  
3     charges, facing mandatory life without parole in federal  
4     prison. And so I had to do something, I had to step in,  
5     and so I stepped in and I took over the case.

6     Q.     And why did you decide to adjust Ms. Strickland's  
7     role on the **Dixon** case and no longer have her serve as  
8     second chair instead of only assigning a new first  
9     chair?

10    A.     It was a tactical strategic decision because I  
11    felt that the only way I could get a continuance from  
12    the judge -- I needed a continuance, I needed more time,  
13    I was going to take the case over and I did. I needed  
14    more time to prepare for that trial. And the only way I  
15    was going to be able to get -- there was only three  
16    continuances and the only way I could get another  
17    continuance was to tell the Court that the first chair  
18    had been removed, the first chair attorney was leaving  
19    the office, and the second chair -- they both have been  
20    removed, and I'm taking over the case. That I needed to  
21    prepare for this trial. The client is facing very  
22    serious charges, a very serious sentence, and I needed  
23    more time to prepare. And this was a strategic decision  
24    on my part and the Court granted my request.

25    Q.     Who else did you speak to about Ms. Strickland's

1 assignment on the **Dixon** case?

2 A. I talked to -- Ann Taylor was a trial team leader,  
3 Peter Adolph was a trial team leader, and JP Davis had  
4 also talked to me about Ms. Strickland second-chairing  
5 the case.

6 Q. And what concerns did they raise?

7 MS. STRICKLAND: Objection, hearsay.

8 THE COURT: Yeah, sustained.

9 Q. Were you aware of any concerns or did you have  
10 any -- sorry, did you have any --

11 MS. STRICKLAND: Objection, hearsay.

12 Q. Did you have any concerns about Ms. Strickland's  
13 assignment as second chair on the **Dixon** case?

14 A. I did not have any concerns, but there were  
15 concerns -- initially I did not have any concerns, um,  
16 but based on the conversations --

17 MS. STRICKLAND: Objection, hearsay.

18 THE COURT: Yeah, it is, Ms. Young, and you want  
19 it for the substance of the matter, not for just the  
20 communication. Sustained. He's told us why she was  
21 removed on that case.

22 MS. YOUNG: Your Honor, it goes to his state of  
23 mind and his understanding of -- what his state of mind  
24 was when he made the decision to reassign Ms. Strickland  
25 on that case.

1           THE COURT: It may be, but it's the substance that  
2     you want. We're not here trying out how he deploys his  
3     resources. He's told us he made a strategic decision  
4     because he needed a continuance from the trial judge.  
5     He got it.

6     Q.     Any other reasons you decided Ms. Strickland  
7     should be reassigned on the **Dixon** case?

8           MS. STRICKLAND: Objection, that relies on  
9     hearsay.

10          THE COURT: It does. Sustained.

11          MS. YOUNG: Well it --

12          THE COURT: Well you may say so, but I've made my  
13     ruling, you want it for the substance in this case.  
14     It's hearsay. Now move on.

15          (Pause.)

16     Q.     Did you personally have any ineffective assistance  
17     of counsel concerns at the time?

18     A.     Clearly, and I think in capital letters, that was  
19     what, um -- that was exactly what was driving this whole  
20     thing. I knew going forward, um, that -- first of all,  
21     if the first chair even was on the case, it was going to  
22     be a possible ineffective assistance, and if I allowed  
23     Ms. Strickland, who has the least amount of experience  
24     in the office to continue, there was a possibility of  
25     ineffective assistance of counsel. And so that was

1 another reason why I just basically, um -- the strategic  
2 reason was for a continuance, but why I took it over was  
3 more senior experience, and I handled it.

4 Q. What if any role did Ms. Strickland have on the  
5 **Dixon** case after she was no longer serving as second  
6 chair?

7 A. My recollection is that she continued the Research  
8 and Writing support after that.

9 Q. Thank you.

10 MS. YOUNG: Mr. Spears, can we please have  
11 Defendants's Exhibit FY for the witness.

12 (On screen.)

13 Q. Mr. Martinez, do you recognize this document?

14 A. Yes, ma'am.

15 Q. And what is it?

16 A. This is an e-mail from myself, um, to JP Davis,  
17 the subject matter is "Jeff King cases to Caryn," dated  
18 June 26th, 2018.

19 MS. STRICKLAND: Objection, hearsay, to the extent  
20 it has statements from others.

21 THE COURT: He hasn't offered it yet. She hasn't  
22 offered it yet.

23 MS. YOUNG: Your Honor, defendants move to admit  
24 FY into evidence, it goes to Mr. Martinez's  
25 understanding of Ms. Strickland's workload. We're not

1 using it for the truth of the matter asserted.

2 MS. STRICKLAND: Objection, hearsay.

3 THE COURT: His understanding of her workload. So  
4 -- but that depends upon the accuracy of the matters  
5 conveyed. I don't understand?

6 MS. YOUNG: Your Honor, it's just the fact that  
7 the information was conveyed to Mr. Martinez.

8 THE COURT: And what difference does that make?

9 MS. YOUNG: It also contains an admission of a  
10 party opponent because part of the e-mail contains --  
11 part of the chain contains Ms. Strickland's e-mail to  
12 Mr. Martinez.

13 THE COURT: Well I suppose I could admit that, um,  
14 but only that.

15 Are you satisfied with that?

16 MS. YOUNG: I am, your Honor.

17 THE COURT: All right. Only the admission, the  
18 e-mail from Ms. Strickland to Mr. Martinez, that's  
19 admitted Exhibit 165.

20 (Exhibit 165, marked.)

21 Q. Mr. Martinez, can you tell us about what happened  
22 in the lead-up to receiving the e-mail from  
23 Ms. Strickland?

24 A. Yes. Um, Mr. King, like I indicated, he was first  
25 chair in this case, um, Mr. Jeff King was leaving the



1 office, and, um, whenever anyone leaves the office --  
2 anyone leaves the office, we have to divvy the cases and  
3 spread them out to the other attorneys. I want to say  
4 Mr. King had approximately 30 or 40 cases. And so I met  
5 with the team leaders to figure out which cases would go  
6 to which attorneys. And so obviously a consideration of  
7 the most difficult cases will go to the most experienced  
8 attorneys and the least difficult cases will go to the  
9 least experienced attorneys generally, and that's what  
10 we did in this case.

11 Q. And what happened after you divvied up the  
12 leaving-attorney's cases?

13 A. We decided that Ms. Strickland would have, to my  
14 recollection, five cases that were the least  
15 complicated, they were mostly all resolved already and  
16 all that required was for her to go to court and, um,  
17 have the client sentenced on either a violation of  
18 supervised release or an illegal reentry. I then  
19 received an e-mail from her -- we sent an e-mail out to  
20 all the attorneys and we advised Ms. Strickland what  
21 cases we decided, and then she sent an e-mail back  
22 indicating that she was too busy, she was working on  
23 other cases for Josh Carpenter in appellate, um,  
24 Mr. Kaite in the trial unit, and that she was just too  
25 busy and she would not be able to handle those cases.

1 Q. And how did you react to that e-mail?

2 A. I was -- I was upset. I'd never seen that happen  
3 quite frankly in 35 years of experience as a Defender.  
4 Within our culture we back each other up, when someone's  
5 down, we take their cases, when someone's up, we bolster  
6 them, and it was a shock to me that she had made herself  
7 available, just weeks before this, to be second chair on  
8 a trial where the client was facing mandatory life  
9 imprisonment, it was an extremely difficult client to  
10 handle, she was willing to second chair and work on that  
11 case, she wasn't that busy, and I take her off that  
12 case, and now just a week later we're asking her to  
13 handle really the most simple cases in federal practice  
14 and she was too busy. And so that clearly I felt that  
15 it was in her interest -- this is my observation of  
16 that, it is to her interest --

17 MS. STRICKLAND: Judge, it lacks foundation,  
18 speculation.

19 THE COURT: No, he's telling us his reaction. He  
20 may tell us his reaction.

21 Go ahead, sir.

22 A. When -- my reaction is that when it's her best  
23 interest to handle something, like a big trial, then she  
24 will do it, but when it's not so much in her interest to  
25 help a fellow attorney handle four simple cases, she's

1 not willing. And so it showed me she was not basically  
2 a team player at that point.

3 Q. Thank you. And you testified a moment ago you  
4 felt upset. What if anything made you calm down after  
5 feeling upset upon receiving this e-mail?

6 A. When I say "upset," I mean I -- I wasn't yelling  
7 at anybody, that was just my reaction. I generally, you  
8 know, stay calm when I'm talking to employees, I don't  
9 yell. What I did was I just took a walk around the  
10 building -- generally whenever I feel like I'm getting a  
11 really negative reaction, I take a walk. And by the  
12 time I got back to the office I had calmed down and I  
13 indicated that I had calmed down.

14 Q. Okay, thank you.

15 Turning now to July, what happened on July 2nd  
16 with Ms. Strickland?

17 A. On July 2nd, um, we went, I think back and forth,  
18 about -- she wanted to meet with me and we agreed to  
19 meet that day and she came to my office. And she  
20 immediately started telling me, um, "I just want to know  
21 if I have your support, if you have my back? If  
22 you're -- and I want to put you in the loop. And I just  
23 want to let you know that I want to put boundaries on  
24 Mr. Davis's way of talking to me. Because when I  
25 canceled that PSI interview with him, he became angry

1 and raised his voice. And I want to let him know he is  
2 not to talk to me that way going forward." I then said,  
3 "Good." You know I mean -- to me that was good that she  
4 was going to try to communicate with Mr. Davis and let  
5 him know what the boundaries were with her. And so I  
6 encouraged it.

7 Q. At this time what did you think she was keeping  
8 you in the loop about?

9 A. I had no idea.

10 Q. And what do you think she meant by "setting  
11 boundaries"?

12 A. That he shouldn't raise his voice when he  
13 disagrees with her.

14 Q. And how long was the meeting on July 2nd with  
15 Ms. Strickland?

16 A. It was short, it wasn't -- I don't recall it being  
17 more than 5 minutes, 10 minutes.

18 Q. And what was your understanding of what  
19 Ms. Strickland was informing you about?

20 A. She was informing me about a disagreement or  
21 her -- about Mr. Davis's reaction to her. And I thought  
22 again this was a breakdown of communication between a  
23 manager and an employee and the employee was going to  
24 talk to the manager and say, "I'm setting boundaries."

25 Q. At that time to what extent did you think

1 Ms. Strickland may have been informing you about sexual  
2 harassment?

3 A. I had no indication she was informing me of that  
4 whatsoever, I had no facts, all I had was a cancellation  
5 of a PSI interview and Mr. Davis being angry. I had no  
6 other facts before me.

7 Q. Thank you. And what did you decide to do after  
8 the July 2nd meeting with Ms. Strickland?

9 A. I decided to bring them together. So that  
10 occurred July 2nd. On July 5th, three days later, I  
11 decided to bring Mr. Davis and Ms. Strickland together  
12 and meet. And then, um, I caught them off-guard,  
13 meaning it wasn't a scheduled meeting. Mr. Davis was in  
14 the office and I told him, "I'm going to meet with you  
15 and meet with Ms. Strickland also, both of you  
16 together." I went to Ms. Strickland's office and I said  
17 "Come to my office, I'm going to meet with you and JP."  
18 She came way with a notepad. He came with a notepad. I  
19 said "Please, guys, put the notepads down."

20 Q. And why did you tell them to put the notepads  
21 away?

22 A. Because I felt like they were both very defensive  
23 with one another and I just wanted to bring a barrier  
24 down, and I think it's difficult for people to talk when  
25 one person's talking and the other one is taking notes

1 of what they're saying. And so I just wanted no one to  
2 take notes and just talk.

3 Q. And what did you discuss at the beginning of that  
4 meeting?

5 A. And so the first thing, after I said that,  
6 Ms. Strickland made it really clear, "I do not want to  
7 talk to you in the presence of Mr. Davis," and I said  
8 "Fine," "Mr. Davis, you're excused," and he left the  
9 room and we closed the door. Then the first thing out  
10 of Ms. Strickland, what she mentioned to me, was the  
11 fact that -- she asked "Is Mr. Davis questioning my  
12 performance?" And I said, "No, I think you're  
13 misunderstanding, he's not questioning your performance.  
14 He never has. We're both very appreciative of all the  
15 hard work that you've done on the **Dixon** case and there's  
16 no issue about performance." And she then said, "Well,  
17 okay, but I do want to tell you about an incident I had  
18 with Mr. Davis." And I said "Fine."

19 "There was one day that we stayed after, late  
20 hours to work in the office, it was raining, I had  
21 commuted to the office with my bicycle, I had --  
22 Mr. Davis had asked me if I needed a ride? I told him  
23 no. I got on my bike, I went to the elevator, went  
24 downstairs to the lobby, and Mr. Davis is standing  
25 there. I then, um, walked, um" -- she indicated -- when

1 I say "I," I'm sorry that's her speaking. She indicated  
2 that she, um, saw Mr. Davis and then he asked her, "Are  
3 you sure you don't need a ride?" And she said, "No, I  
4 don't need a ride." Then she walked out one exit and he  
5 walked out another exit.

6 Q. What did she tell you, if anything, about  
7 out-of-office drinks or lunches between her and  
8 Mr. Davis?

9 A. She didn't say anything at that meeting.

10 Q. And what else, if anything, did she tell you about  
11 her interactions with Mr. Davis at that meeting?

12 A. There was nothing else at that meeting.

13 THE COURT: Well wait a minute. You've told us,  
14 after she recounted this incident that you have now  
15 relayed to us, what happened next in that meeting? Who  
16 spoke?

17 THE WITNESS: Okay.

18 A. Okay, what happened next was, um, she indicated  
19 she was -- that made -- that situation made her feel  
20 very uncomfortable. I then asked her specifically,  
21 "When you say 'uncomfortable,' are you suggesting that  
22 he sexually harassed you?" She said clearly, "No, I am  
23 not alleging that he was sexually harassing me, and  
24 please don't accelerate what I'm telling you about  
25 Mr. Davis."

1           And, um, we talked a little bit about other  
2 things. I felt she felt comfortable and I said at that  
3 point, "Do you mind if I bring in Mr. Davis back into  
4 the office?" And she said "No." I was convinced there  
5 was no sexual harassment at that time, no allegation of  
6 sexual harassment at that time. I brought him in and I  
7 advised Mr. Davis that -- I made no mention to  
8 Mr. Davis, to maintain her confidence -- she also asked  
9 me to please keep it confidential, "I don't want to share  
10 this with anyone else in the office or with Mr. Davis."  
11 I then shared with Mr. Davis her concern that she  
12 thought that he was questioning her performance. He  
13 then basically corroborated what I said, he said, "No, I  
14 think there's a misunderstanding, I am not questioning  
15 your performance, the only issue I do have is that you  
16 blew me off when we had scheduled the PSI interview."

17 Q.       Thank you. And what --

18 MS. STRICKLAND: Objection, hearsay.

19 THE COURT: I -- in the exercise of discretion,  
20 I'm going to let that stand. I'm going to take that as  
21 a motion to strike, he had testified -- I treat it as a  
22 motion to strike, but I let it stand.

23 Q.       Mr. Martinez, before Mr. Davis returned to the  
24 room, what if anything did Ms. Strickland ask about her  
25 assignments with Mr. Davis?



1       A.       There was nothing about her assignment to  
2       Mr. Davis. I -- when Mr. Davis reentered into the  
3       office, I then -- it was clear that they were both  
4       defensive with one another and I suggested that maybe we  
5       could change this mentor/mentee relationship. And I  
6       asked Ms. Strickland and she said she agreed, and  
7       Mr. Davis agreed, and I suggested another attorney to be  
8       her mentor, Aaron Johnson, who had approximately 20, 25  
9       years experience, and had a good relationship with  
10      Ms. Strickland. And so I said "How about Aaron  
11      Johnson?" She said, "That's a good idea, no objection."  
12      "Mr. Davis, do you have a problem with that?" "No." I  
13      then instructed Mr. Davis to advise Mr. Johnson that  
14      he -- if he's willing, he would be the mentor for  
15      Ms. Strickland going forward.

16      Q.       And what were your impressions of how  
17      Ms. Strickland reacted to the meeting's conclusion?

18      A.       She was amenable to everything. I then asked her  
19      several times, "Are you comfortable with that? Are you  
20      okay with this? Is there anything else?" And she said  
21      "No, I am comfortable. I'm okay with this." And she  
22      left. And, um, there was another e-mail, I think a  
23      follow-up that she sends, and she summarizes the meeting  
24      in basically saying, "I just want to make sure that  
25      there was no issue about my performance?" And I said,

1 "No, you've got it right, there was no issue of your  
2 performance." And so I left thinking that was really  
3 the primary issue during that meeting.

4 Q. After the July 5th, meeting, Mr. Martinez, how did  
5 you view the breakdown in communications between  
6 Mr. Davis and Ms. Strickland with respect to your role  
7 as the senior manager of the FDO?

8 A. I viewed it as it's fairly typical, it happens  
9 in -- I can only speak for defender offices, in defender  
10 offices a lot of attorneys are under a lot of stress, we  
11 are always under a lot of very adverse adversarial  
12 situations, we have situations with judges, adversarial  
13 situations with U.S. Attorneys, with our clients going  
14 to jail in really rough environments. It's speedy  
15 trial, heavy case loads. So it's a lot of stress. And  
16 it's not unusual for there to be a disagreement between  
17 a manager and an employee. And I feel that my job is to  
18 try to mediate the breakdown of communications between a  
19 manager and an employee and that's what I was doing on  
20 this day.

21 Q. Thank you.

22 MS. YOUNG: Mr. Spears, can you please show the  
23 witness Defendants's Exhibit EY.

24 (On screen.)

25 Q. Mr. Martinez, do you recognize this document?

1 A. Yes, ma'am.

2 Q. And what is it?

3 A. It's a legal significant event log and it's July  
4 5th, 2018.

5 Q. And did you author these notes?

6 A. Yes, ma'am.

7 Q. And what are they about?

8 A. It summarizes -- I took notes right after the  
9 meeting and it summarizes, um, what occurred in the  
10 meeting.

11 Q. Thank you.

12 MS. YOUNG: Defendants move to admit Exhibit EY  
13 into evidence.

14 THE COURT: No objection?

15 MS. STRICKLAND: No, thank you.

16 THE COURT: I didn't hear? I'm sorry. No  
17 objection?

18 MS. STRICKLAND: No objection. I apologize.

19 THE COURT: No, that's fine.

20 Exhibit 166 in evidence.

21 (Exhibit 166, marked.)

22 MS. YOUNG: Mr. Spears, you can take down that  
23 document. Thank you. (Takes down.) Mr. Spears, please  
24 pull up Defendants's Exhibit EW.

25 A. (Looks.)

1 Q. Thank you. Are you familiar with this document,  
2 Mr. Martinez?

3 A. Yes, ma'am.

4 Q. And what is it?

5 A. It's an e-mail from me to Ms. Caryn Devens, dated  
6 July 9th, and the subject matter is "Next steps after  
7 meeting last week."

8 Q. And were you responding to an e-mail from  
9 Ms. Strickland?

10 A. That's correct.

11 MS. YOUNG: Your Honor, defendants move to admit  
12 Exhibit EW into evidence.

13 THE COURT: No objection to EW?

14 MS. STRICKLAND: No objection.

15 THE COURT: It's admitted, Exhibit 167.

16 (Exhibit 167, marked.)

17 Q. Mr. Martinez, at the time you received this  
18 e-mail, what was your impression of Ms. Strickland's  
19 performance?

20 A. Well like I indicated, she worked hard on the  
21 **Dixon** trial, it was top performance, but there's another  
22 aspect of performance. There was no issue in terms of  
23 work, hard work, she was a hard worker for the trial,  
24 however overall I had questions about whether she was a  
25 team player because of her initially volunteering to

1 take the very serious trial and then not being willing  
2 to take very simple cases when we really needed her to  
3 take those cases.

4 And there was also a phone call that she made  
5 that, um -- and this is early in May, she had called me  
6 and, um -- because Mr. Davis had asked her to do a  
7 cross-examination of a police officer and she called me  
8 in a panic saying she didn't think she was able to do  
9 it, or do a cross-examination. I encouraged her, I  
10 said, "You have the ability, you are able to do it, so  
11 do it." And she did it and she did a great job. And so  
12 the fact that she was calling me at night concerned that  
13 she would not be able to do it, was not wanting to do  
14 it, sort of questioned to me whether she was made out to  
15 be a defender, because all defenders that I'm aware of,  
16 when coming to the office and lack experience, they're  
17 biting at the bit, they really want to get into court  
18 and they really want to make the oral arguments, they  
19 really want to get involved, and she was sort of in a  
20 panic when she called me. And so there was this issue  
21 overall.

22 So, yes, she was a hard worker, but there was an  
23 issue overall about being a team player, um, and her  
24 willingness, um, to take on those challenges of cross-  
25 examining a police officer in court.

1 Q. Thank you.

2 MS. YOUNG: Mr. Spears, can you please take down  
3 this exhibit and put up please Defendants's Exhibit EL.

4 (On screen.)

5 Q. Mr. Martinez, are you familiar with this document?

6 A. Yes, ma'am.

7 Q. And what is it?

8 A. It's an e-mail from me, um, it was sent on July  
9 26th to the entire staff, and, um, the subject matter is  
10 "Research and Writing support follow-up," and there's an  
11 attachment of an AFD position.

12 Q. And when did you send this e-mail?

13 A. This was dated July 26th.

14 Q. Okay.

15 MS. YOUNG: Defendants move to admit Exhibit EL  
16 into evidence.

17 THE COURT: No objection to EL?

18 (Pause.)

19 MS. STRICKLAND: We're going to object on hearsay  
20 grounds.

21 THE COURT: What do you say to that?

22 MS. YOUNG: It's not hearsay because we're just  
23 using it for the timeline of when the assignment issue  
24 was resolved, so just to show the dates of the fact that  
25 the statements were made, not to show the truth of the

1 matter asserted.

2 THE COURT: As limited I'll admit it in evidence,  
3 168 as limited.

4 MS. YOUNG: Thank you, your Honor.

5 (Exhibit 168, marked.)

6 Q. What was the purpose of the July 20th meeting  
7 mentioned in this e-mail, Mr. Martinez?

8 A. In essence it was about the, um, the R&Ws and the  
9 R&Ws would be supporting the trial teams, and, um, that  
10 basically, um, Jared, um, the -- the requests for work  
11 from the attorneys would be funneled through Jared  
12 Martin, who was the other R & W, and he would distribute  
13 the work to the different attorneys on the different  
14 teams.

15 Q. And why did you decide to have Mr. Martin, um,  
16 funnel the work for the different Research and Writing  
17 attorneys?

18 A. He had, I want to say, at least 8 years, um,  
19 experience as a Indiana Community Defender before he  
20 came to our office, and he had been in our office for  
21 several years, he had the most experience as an R and W.  
22 He had already done this kind of thing off in Asheville,  
23 um, which I say in this e-mail, well that he had already  
24 handled the requests from the Asheville office. And so  
25 I thought he was the most logical person to do it.

1 That's why he was selected.

2 Q. And why was it necessary to make that selection,  
3 did something happen beforehand?

4 A. Yes, I had -- I believe it was on July 20th, there  
5 was an extensive meeting that we had with the team  
6 leaders, I want to say it took literally hours, and we  
7 reshuffled the office. There were like 35 different  
8 moves, and we were trying to just be more efficient in  
9 what we're doing as an office. And, um, inadvertently,  
10 um, Caryn would be supporting JP's team. It was decided  
11 that -- I'm sorry, Ms. Strickland would be supporting or  
12 doing R & W work for JP Davis's time. And so that was  
13 on July 20th.

14 Soon thereafter, um, I realized that that was  
15 inadvertent, it was not intentional, it was just an  
16 oversight, that there were so many other matters going  
17 on. And so I contacted Ms. Strickland, I apologized to  
18 her for the inadvertence, it was not intentional. I  
19 indicated to her that I would be changing the structure  
20 and this was my solution by, um, having Jared then do  
21 all of the dishing out of the work or assigning the work  
22 that came to him.

23 Q. Why was the assignment inadvertent?

24 A. It was not -- it was not purposeful. Again there  
25 were so many things going on. It wasn't like I am



1     thinking, "Oh, let me put Ms. Strickland on to do  
2     Research and Writing work for Mr. Davis." It wasn't an  
3     intentional thing. It was just inadvertent in that  
4     respect.

5     Q.     What if anything had you --

6           THE COURT: Excuse me, I am going to interrupt.

7           Go back to your meeting on July 5th, Mr. Martinez,  
8     when you suggested that Mr. Johnson be Ms. Strickland's  
9     mentor and she agreed with that. I get the sense from  
10    your testimony that after July 5th -- well let me ask  
11    the question without stating anything.

12           As the office was then organized on July 5th, was  
13    she the Research and Writing Specialist for any  
14    particular team and if so, whose team?

15           THE WITNESS: On July 5th?

16           THE COURT: Yes.

17           THE WITNESS: Your Honor?

18           THE COURT: Yes.

19           THE WITNESS: Off the top of my head, I don't  
20    recall if she was assigned to a team.

21           THE COURT: Well then I get the sense that after  
22    that July 5th meeting, you believed that it was best  
23    that Mr. Davis and Ms. Strickland work separately or  
24    apart from each other, is that what I understand your  
25    testimony to be?

1           THE WITNESS: Well, your Honor, I want to clarify.  
2     The priority on July 5th was to separate the  
3     mentor/mentee relationship that Ms. Strickland and  
4     Mr. Davis had, that was the priority, because there was  
5     a breakdown of communication. I did not think of the  
6     later consequences about how the workload was going to  
7     be distributed by the Research and Writing Specialists,  
8     in particular Ms. Strickland, and what effect that would  
9     have in relation to Mr. Davis. And so I became aware of  
10    that, that Ms. Strickland was assigned to support  
11    Mr. Davis soon after my July 20th e-mail, putting her on  
12    the team, and that's when it dawned on me, "Wait, I need  
13    to separate them, she's uncomfortable with Mr. Davis."  
14    And so that's when it occurred. But before that, July  
15    5th, in my mind the priority was to separate them in  
16    terms of the mentor/mentee relationship. I was not yet  
17    considering what effect that would have in terms of the  
18    workload and then coming together with the workload.

19           THE COURT: Thank you. You've answered my  
20    question.

21           Go ahead, Ms. Young.

22    Q.     After you made the July 20th assignment, what  
23    happened next, Mr. Martinez?

24    A.     I indicated I contacted Ms. Strickland, I told her  
25    about accepting responsibility for the inadvertence, I

1     also texted Mr. Davis and I told him at that point "I  
2     made a decision, Ms. Strickland advised me to hold in  
3     confidence what she told me on July 5th about the  
4     bicycle incident involving Mr. Davis and I did, I hadn't  
5     shared it, but now I'm in a pickle because  
6     Ms. Strickland is going to wind up doing some type of  
7     work for Mr. Davis if I don't come in and intervene,"  
8     that the only way that I found to intervene is by  
9     telling Mr. Davis and texting him. I said "JP, please  
10    do not text, e-mail, or call Ms. Strickland and I will  
11    talk to you tonight and let you know why." And he said  
12    "Fine." I then spoke to him that evening and I advised  
13    him, "I am putting you on notice to not talk to her, not  
14    to e-mail her, because on the July 5th meeting she told  
15    me she felt uncomfortable with you in reference to an  
16    incident in the lobby with her bicycle." And he said,  
17    "Okay, got it. Fine." And he was fine with it.

18   Q.     Okay, I just want to go back for a minute.

19           What effect, if any, did funneling work through  
20   Mr. Martin have on Ms. Strickland's job  
21   responsibilities?

22   A.     I'm sorry, can you repeat that question?

23   Q.     Sure.

24           What effect did funneling work through Mr. Martin  
25   have on Ms. Strickland's job responsibilities, if any?

1       A.       There was no effect. She's indicated -- she  
2       indicated at the August 9th -- I had a meeting after  
3       this with her, and she felt she was demoted, and I made  
4       it very -- she felt she was demoted as a result of me  
5       making Jared Martin the gatekeeper on assignments. And  
6       I told her, "There's no way it's a demotion. Jared  
7       Martin is not your supervisor, he is only the most  
8       experienced in that unit, and I just gave him the  
9       responsibility for divvying up the work. There is no  
10      change whatever in responsibilities."

11      Q.       And to your knowledge how much, if anything, did  
12      Mr. Martin know about the situation between  
13      Ms. Strickland and Mr. Davis at that time?

14      A.       He knew nothing at that time.

15      Q.       And were Mr. Martin and Ms. Strickland equals?

16      A.       They were equals, yes, ma'am.

17              MS. YOUNG: Mr. Spears, can I please have  
18      Defendants's Exhibit E9. I'm sorry, EN.

19              (On screen.)

20              THE COURT: Well maybe this is a good place to  
21      stop because it's about 1:00, and I think we'll pick up  
22      here tomorrow. You say, or your co-counsel, Mr. Kolsky,  
23      says that there's an expert, or you said that an expert  
24      is on his way here. I said experts can be taken out of  
25      order and you may. Whenever it's convenient for you to

1 call the expert, we can suspend with whatever witness is  
2 on the stand.

3 As of now, each side having 2 1/2 days, the  
4 defendant has used -- the plaintiff has used up 2 hours,  
5 15 minutes, the defense has used up 1 day, 1 hour, 15  
6 minutes.

7 We will deal with any questions about exhibits as,  
8 um, Ms. Strickland has forecast, we'll deal with that at  
9 the close of all the live evidence before final argument  
10 so that we know what's in evidence for final argument.

11 Very well, we'll recess until 9:00 a.m. tomorrow  
12 morning. We'll recess.

13 THE CLERK: All rise.

14 MR. KOLSKY: Your Honor, if we could just ask one  
15 clarifying question?

16 THE COURT: Yes.

17 MR. KOLSKY: Well actually I guess two clarifying  
18 questions.

19 How many hours a day, your Honor, mentioned --

20 THE COURT: 3 1/2 hours.

21 MR. KOLSKY: Thank you.

22 And then the other question. With regard to your  
23 Honor's ruling, um, regarding the plaintiff, I  
24 understand that the plaintiff's expert's deposition  
25 transcript is coming in. Is plaintiff also, um,

1 permitted to introduce the expert report?

2 THE COURT: No. No, the expert reports are  
3 usually not evidence. The deposition, where you had an  
4 opportunity to cross-examine and having looked at it  
5 you've taken extensive use of that opportunity, that's  
6 it. Nor are your expert reports in. I would accept  
7 them by agreement, but there is no agreement.

8 All right, we'll recess.

9 MR. KOLSKY: Thank you, your Honor.

10 MR. STRICKLAND: Your Honor, may the plaintiff be  
11 heard on that?

12 THE COURT: On what? I've just made a ruling on  
13 evidence. If you want to agree to things --

14 MR. STRICKLAND: No, just for a point of  
15 clarification. The defendants admitted the expert's  
16 report at the deposition, it's attached to the  
17 deposition designation.

18 THE COURT: Well if they did, they did. We'll  
19 recess.

20 MR. STRICKLAND: Yes, thank you.

21 THE CLERK: All rise.

22 MS. YOUNG: Your Honor, the report from the  
23 deposition testimony is the March report, which is not  
24 Dr. Albert's current report, which was only issued after  
25 the deposition was taken. And so we object to the

1 admission of the March report into evidence. And the  
2 July report was not part of the deposition transcript or  
3 an exhibit to the deposition.

4 THE COURT: Look, this is all my fault. In the  
5 future I will not say we're in recess until I'm done and  
6 I'm not entertaining anyone's comments or arguments  
7 after that. I've made a ruling. The ruling stands. If  
8 you need to sort it out, we'll have to sort it out at  
9 some other time. Now we are in recess. We'll recess.

10 (Adjourned, 1:05 p.m.)  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,  
do hereby certify that the foregoing record is a true  
and accurate transcription of my stenographic notes  
before Judge William G. Young, on Wednesday, December  
13, 2023, to the best of my skill and ability.

/s/ Richard H. Romanow 03-11-24

\_\_\_\_\_  
RICHARD H. ROMANOW      Date